



# CITY OF ALAMEDA • CALIFORNIA

SPECIAL MEETING OF THE CITY COUNCIL  
TUESDAY - - - SEPTEMBER 6, 2005 - - - 6:10 P.M.

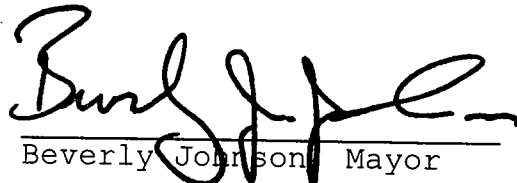
Time: Tuesday, September 6, 2005, 6:10 p.m.

Place: **City Council Chambers Conference Room**, City Hall, corner  
of Santa Clara Avenue and Oak Street.

Agenda:

1. Roll Call.
2. Public Comment on Agenda Items Only.  
Anyone wishing to address the Council on agenda items only,  
may speak for a maximum of 3 minutes per item.
3. Adjournment to Closed Session to consider:
  - 3-A. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Negotiator: Beverly Johnson.  
Employee: City Attorney.
  - 3-B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Attorney.
  - 3-C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b)  
of Section 54956.9.  
Number of cases: One.
  - 3-D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: 2900 Main Street.  
Negotiating parties: City of Alameda and Alameda Gateway,  
Ltd.  
Under negotiation: Price and terms.
4. Announcement of Action Taken in Closed Session, if any.

Adjournment

  
Beverly Johnson Mayor



## CITY OF ALAMEDA • CALIFORNIA

### IF YOU WISH TO ADDRESS THE COUNCIL:

1. Please file a speaker's slip with the Deputy City Clerk and upon recognition by the Mayor, approach the podium and state your name; speakers are limited to three (3) minutes per item.
2. Lengthy testimony should be submitted in writing and only a summary of pertinent points presented verbally.
3. Applause and demonstration are prohibited during Council meetings.

AGENDA - - - - - REGULAR MEETING OF THE CITY COUNCIL  
TUESDAY - - - - SEPTEMBER 6, 2005 - - - - 7:30 P.M.

[Note: Regular Council Meeting convenes at 7:30 p.m., **City Hall, Council Chambers, corner of Santa Clara Avenue and Oak Street**]

The Order of Business for City Council Meeting is as follows:

1. Roll Call
2. Agenda Changes
3. Proclamations, Special Orders of the Day and Announcements
4. Consent Calendar
5. Agenda Items
6. Oral Communications, Non-Agenda (Public Comment)
7. Council Communications (Communications from Council)
8. Adjournment

### Public Participation

Anyone wishing to address the Council on agenda items or business introduced by Councilmembers may speak for a maximum of 3 minutes per agenda item when the subject is before Council. Please file a speaker's slip with the Deputy City Clerk if you wish to address the City Council.

SPECIAL MEETING OF THE CITY COUNCIL 6:10 P.M.  
CITY COUNCIL CHAMBERS CONFERENCE ROOM  
Separate Agenda (Closed Session)

## PLEDGE OF ALLEGIANCE

1. ROLL CALL - City Council

2. AGENDA CHANGES

3. PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

3-A. Library Project update.

4. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Council or a member of the public.

4-A. Minutes of the Special and Regular City Council meetings held on August 16, 2005. [City Clerk]

4-B. Bills for ratification. [Finance]

4-C. Recommendation to authorize the Mayor to send letters to federal legislators supporting S. 1260 (Vitter), S. 113 (Feinstein), H.R. 2353 (Rogers), and H.R. 3431 (Dent) which amend federal legislation to further restrict the establishment of tribal gambling casinos. [City Manager]

4-D. Recommendation to accept the work of Gallagher & Burk, Inc. for repair and resurfacing of certain streets, Phase 25, No. P.W. 05-04-06. [Public Works]

4-E. Recommendation to approve the Request for Proposals (RFP) for Restaurant and Bar Services at the Chuck Corica Golf Complex. [Golf]

5. REGULAR AGENDA ITEMS

5-A. Adoption of Resolution Commending Alameda Free Library Director Susan H. Hardie for Her Contributions to the City of Alameda.

- 5-B. • Adoption of Resolution Appointing Marilyn Ezzy Ashcraft as a Member of the Economic Development Commission;
- Adoption of Resolution Reappointing Robert F. Kelly as a Member of the Economic Development Commission; and
  - Adoption of Resolution Reappointing Anthony M. Santare as a Member of the Golf Commission.

- 5-C. Public hearing to consider **Introduction of Ordinance** "Amending Alameda Municipal Code by Amending Chapter XIII (Building and Housing) by Repealing Article I, Section 13-4 (Alameda Electrical Code) in Its Entirety and Adding a New Article I, Section 13-4 (Alameda Electrical Code) to Adopt the 2004 California Electrical Code and Approve Certain Amendments Thereto." [Planning and Building]
- 5-D. Public hearing to consider an Appeal of the Historical Advisory Board's decision to impose penalties for unauthorized demolition; **and adoption of related resolution.** The site is located at 616 Pacific Avenue, within the R-4, Neighborhood Residential District. Applicant/Appellant: Erwin Roxas. [Planning and Building]
- 5-E. Adoption of Resolution Empowering the City Attorney to Employ Special Legal Counsel; and
- Recommendation to approve Policy regarding Hiring Procedures for Special Legal Counsel. [City Attorney]
6. ORAL COMMUNICATIONS, NON-AGENDA (Public Comment)
- Any person may address the Council in regard to any matter over which the Council has jurisdiction or of which it may take cognizance, that is not on the agenda.
7. COUNCIL COMMUNICATIONS (Communications from Council)
- 7-A. Consideration of Mayor's nominations for appointment to the Civil Service Board, Economic Development Commission, Historical Advisory Board, Housing and Building Code Hearing and Appeals Board, Public Art Commission and Recreation and Parks Commission.
8. ADJOURNMENT

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- For use in preparing the Official Record, speakers reading a written statement are invited to submit a copy to the City Clerk at the meeting or e-mail to: [lweisige@ci.alameda.ca.us](mailto:lweisige@ci.alameda.ca.us)
- Sign language interpreters will be available on request. Please contact the City Clerk at 747-4800 or TDD number 522-7538 at least 72 hours prior to the Meeting to request an interpreter.
- Equipment for the hearing impaired is available for public use. For assistance, please contact the City Clerk at 747-4800 or TDD number 522-7538 either prior to, or at, the Council Meeting.
- Accessible seating for persons with disabilities, including those using wheelchairs, is available.
- Minutes of the meeting available in enlarged print.
- Audio Tapes of the meeting are available upon request.
- Please contact the City Clerk at 747-4800 or TDD number 522-7538 at least 48 hours prior to the meeting to request agenda materials in an alternative format, or any other reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting.



# HARBOR BAY

August 29, 2005

CITY OF ALAMEDA  
CITY CLERK'S OFFICE  
RECEIVED

05 AUG 30 PM 4:30

DISTRIBUTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Honorable Mayor Beverly Johnson  
Honorable Members of the Alameda City Council

Dear Madame Mayor,

We have been advised by staff that the issues concerning our current rezoning application are being submitted to Council for your consideration in Executive Session.

We feel strongly that our current application is a minor amendment to the existing approvals which does not require an amendment to the long standing Development Agreement, and as such is exempt from the City's current Inclusionary Housing Ordinance. We have two (2) legal opinions supporting our position.

It's unfortunate that there is no one in the current City administration that was around in 1976 when the City ultimately approved Harbor Bay Isle's development plan for 3,200 dwelling units. At that time we were clearly promised the right and granted the entitlements to develop 3,200 residential units.

Since 1963, Doric has been a responsible and generous member of Alameda's community. We have supported virtually every organization and philanthropic initiative in the City. We think it is fair to say that many cities would envy Alameda's good fortune at having a local developer that has taken pride in executing our Master Plan while actively participating in the community. Our industry has recognized the quality of our work by awarding us with just about every award they offer.

Most importantly, we have honored both the spirit and letter of all our agreements with the City.  
**WE NOW EXPECT THE CITY TO DO THE SAME!**

It is clearly understood that should we ever in the future apply for permits to develop more than 3,200 dwelling units, we would expect that those units in excess of 3,200 would be subject to the Inclusionary Housing Ordinance.

Thank you for your consideration,

Ronald H. Cowan, Chairman  
The Doric Group and Harbor Bay Isle Associates

Re: Item #3-C  
09-06-05 Closed Session

**CITY OF ALAMEDA**  
Memorandum

To: Honorable Mayor and  
Councilmembers

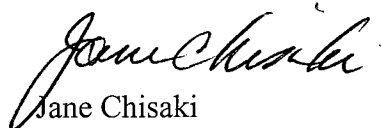
From: Debra Kurita  
City Manager

Date: August 29, 2005

Re: New Main Library Project Update

Attached to this memorandum is the September 1, 2005, Library Construction Report.

Respectfully submitted,



Jane Chisaki  
Interim Library Director

Attachment

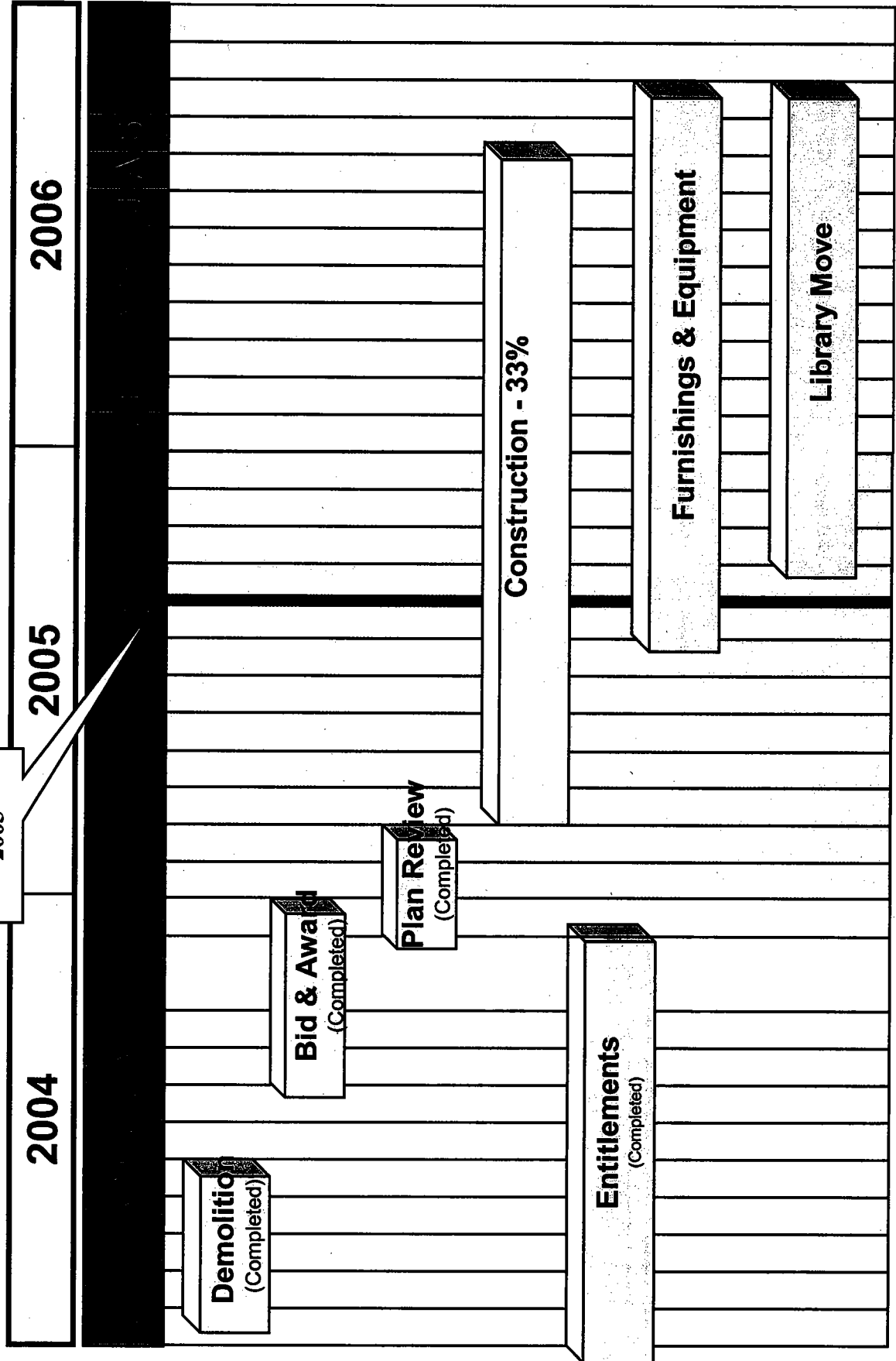
# **Library Construction Report**

September 1, 2005



# Library Project Timeline

Status as of  
September 1,  
2005



### **Construction**

- The Library webcam will operate throughout the project. It is available on the Library's and the City's websites.
- Notice to Proceed was issued on March 14, with substantial completion scheduled for September 5, 2006.
- The first phase of structural steel was completed on August 25<sup>th</sup>.
- The main staircase was installed on August 29<sup>th</sup>.
- Second floor decking will be installed by September 2nd.
- Second floor concrete deck is scheduled to be poured on September 13<sup>th</sup>.
- The structure is scheduled to be weathertight by December, 2005.
- The project remains on schedule.

### **Furnishings and Equipment Procurement**

- Planning process for FF&E has begun.

### **Library Move**

- Planning process for move begins October 2005.

### **Library Opening**

- The opening of the Main Library is tentatively scheduled for October 2006.

### **Budget**

- The budget report, including supplemental funding sources, is attached.

**Budget for Alameda Free Library - New Main Library Project**  
**Inception to date through the month of: July 2005**

<b>Sources of Budgeted Funds</b>	<b>Budget</b>
State Grant	\$15,487,952.00
Measure O	8,000,000.00
Contributions	10,000.00
Supplemental Funding:	
Interest Earned on Measure O Funds	160,000.00
Stafford Bequest	745,297.00
Redevelopment Funding	2,000,000.00
Additional Measure O Funds	670,000.00
Alameda County Waste Management Grant	75,000.00
Recycled Content Grant from Public Works	20,000.00
<b>Sources Subtotal:</b>	<b>27,168,249.00</b>
<b>Expenditures to date:</b>	<b>6,734,249.00</b>
<b>Balance Available:</b>	<b>20,434,000.00</b>
<b>Change Orders:</b>	
Total contingency	1,740,000.00
Change orders to date <sup>1</sup>	(146,796.00)
Current change order	72,602.00
Revised contingency amount	1,665,806.00

<sup>1</sup>Up to \$95,000 in grant funding will be used to offset this change order

**UNAPPROVED MINUTES**  
MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
TUESDAY- -AUGUST 16, 2005- -6:10 P.M.

Mayor Johnson convened the Special Meeting at 6:10 p.m.

Roll Call - Present: Councilmembers Daysog, deHaan, Gilmore,  
Matarrese, and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(05- ) Conference with Labor Negotiator - Agency Negotiator:  
Arthur Hartinger of Meyers, Nave, Riback Silver and Wilson;  
Employee: City Attorney.

Following the Closed Session, the Special Meeting was reconvened  
and Mayor Johnson announced that the Council discussed the City  
Attorney and no action was taken.

Adjournment

There being no further business, Mayor Johnson adjourned the  
Special Meeting at 6:45 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown  
Act.

**UNAPPROVED MINUTES**  
MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -AUGUST 16, 2005- -7:30 P.M.

Mayor Johnson convened the Regular Meeting at 7:55 p.m.  
Councilmember Daysog led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, deHaan, Gilmore,  
Matarrese, and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(05-\_\_\_\_) Proclamation recognizing John Knowles for his  
contribution to the revitalization of the Park Street Business  
District.

Mayor Johnson read and presented the proclamation to John Knowles.

Mr. Knowles thanked the Council for the proclamation.

(05-\_\_\_\_) Proclamation designating August 26<sup>th</sup> as Women's Equality  
Day in Alameda.

Mayor Johnson read and presented the proclamation to Dorie  
Behrstock, Vice President of Isle City of Alameda Business and  
Professional Women.

Ms. Behrstock introduced Isle City of Alameda Business and  
Professional Women members Margaret Seaman and Joanne Ainsworth;  
thanked the Council for the proclamation; invited the Council and  
public to a reception on August 26, 2005 at 6:00 p.m. at the Harbor  
Bay Community Center.

CONSENT CALENDAR

Mayor Johnson announced that the Resolution Creating Special  
Newsrack Districts [paragraph no. 05-\_\_\_\_] was removed from the  
Consent Calendar for discussion.

Vice Mayor Gilmore moved approval of the remainder of the Consent  
Calendar.

Councilmember deHaan seconded the motion, which carried by

unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number]

(\*05- ) Minutes of the Special Joint City Council, Community Improvement Commission, Alameda Reuse and Redevelopment Authority and Housing Authority Board of Commissioners meeting and the Regular City Council meeting held on August 2, 2005. Approved.

(\*05- ) Ratified bills in the amount of \$2,127,711.09.

(\*05- ) Recommendation to accept Quarterly Investment Report for period ending June 30, 2005. Accepted.

(\*05- ) Recommendation to accept Quarterly Sales Tax Report for the period ending June 30, 2005, for sales transactions in the First Calendar Quarter of 2005. Accepted.

(\*05- ) Recommendation to authorize the City Manager to execute second amendment to Consultant Agreement with Harris & Associates, extending the term, scope of work and price for services associated with the Webster Street Renaissance Project. Accepted.

(\*05- ) Recommendation to approve an agreement with Ameresco Keller Canyon, LLC for the purchase of power from Landfill Gas Generation. Accepted.

(05- ) Resolution No. 13882, "Creating Special Newsrack Districts in Both the Park Street and West Alameda Business Districts as Authorized in the Alameda Municipal Code Section 22-7, Newspaper and Periodical Vending Machines of Article 1 (Streets), Chapter XXII (Streets and Sidewalks)." Adopted.

Councilmember Matarrese stated that the public should be aware of the Newsrack Districts, which go along with the improvements on Park and Webster Streets and increase attractiveness in the business districts.

Robb Ratto, Park Street Business Association (PSBA), urged adoption of the resolution.

Sherri Steig, West Alameda Business Association (WABA), stated WABA supports adoption of the resolution.

Councilmember Daysog stated that he would like to recognize the efforts of former Councilmember Karin Lucas; requested staff to review posting signs on historic lampposts.

Mayor Johnson stated a lot of signs are attached to the poles; the signs detract from the attractiveness of the poles and should be avoided if possible.

Councilmember deHaan moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(\*05- ) Resolution No. 13883, "Requiring City Council Approval of Any Amendment to the Employment Contracts of the City Manager or City Attorney." Adopted.

(\*05- ) Resolution No. 13884, "Amending the Alameda City Employees (ACEA) Salary Schedule by Establishing Salary Range for the Position of Senior Combination Building Inspector." Adopted.

(\*05- ) Resolution No. 13885, "Amending the Management and Confidential Employees Association (MCEA) Salary Schedule by Establishing Salary Ranges for the positions of Information Systems Network Analyst and Safety Officer." Adopted.

#### REGULAR AGENDA ITEMS

(05- ) Public Hearing to consider Appeals of the Planning Board's approval of a Use Permit and Design Review for the parking garage and new Cineplex components of the proposed Alameda Theater Project on Oak Street and Central Avenue. This site is located at 1416 Oak Street and 2305 Central Avenue (Video Maniacs site), within the C-C-T (Community Commercial Theater Combining) District. Applicants: City of Alameda (DSD) and Kyle Conner, Alameda Entertainment Associates, LP. Appellants: Ani Dimusheva and Valerie Ruma;

(05- A) Resolution No. 13886, "Upholding the Planning Board of the City of Alameda's Decision to Approve Design Review DR05-0028 and Use Permit UP05-0008 for the Proposed New Civic Center Parking Garage." Adopted; and

(05- B) Resolution No. 13887, "Resolution Upholding the Planning Board of the City of Alameda's Decision to Approve Design Review DR05-0041 for the Proposed Cineplex at 2305 Central Avenue." Adopted.

The Development Services Director gave a brief presentation.

Mayor Johnson opened the public portion of the Hearing.

Proponents (In favor of project): Kathy Moehring, Alameda (not present); Kevis Brownson, Alameda (submitted letter); Debbie George, Alameda; Harry Hartman, Alameda; Karen Bay, Alameda; Michael John Torrey, Alameda; Ann Bracci, Alameda; Sherri Steig, WABA; Gene Oh, Alameda (not present); Barbara Marchand, Marchand and Associates (not present); Dave Corkill, Cinema West; Marilyn Ezzy Ashcraft, Alameda; Melody Marr, Chamber of Commerce; Robb Ratto, PSBA; Lars Hansson, PSBA; and Frank Lopez, Alameda.

Opponents (Not in favor of project): Joseph Woodard, Estuary Park Action Committee (EPAC); Dorothy Freeman, EPAC; Stacey Benedetto, Alameda; Kathryn Vincent, Alameda (not present); Nick Benedetto, Alameda (not present); Monty Heying, Alameda; Phyllis Greenwood, Alameda; Richard Tester, Alameda; Julie Chandler, Alameda (submitted letter); Debra Overfield; Carol Hanson, Alameda; Celine Perrin, Alameda; Nancy Hird, Alameda; Ann Channin, Alameda; Michael Karvasales, Alameda; Douglas Holmes, Alameda (submitted letter); John McNulty, Alameda; Jay Levine, Alameda (submitted letter); Ross Dileo, Alameda; Richard Rutter, Alameda; Kevin Frederick, Alameda; Ginni Dofflemyer, Alameda; Robert Todd; Chuck Millar, Alameda; Birgitt Evans, Alameda Architectural Preservation Society (AAPS); Jan Schaeffer, Alameda; Gretchen Lipow, Alameda; Randy Watkins, Alameda (submitted letter); Nils Ohlson, Alameda; Rosemary McNally, Alameda (submitted comments); Mary Fambrough, Alameda; Mr. Roake, Alameda; Jon Spangler, Alameda; Pat Payne, Alameda; Jim Strehlow, Alameda; David Baker, Alameda; Mike Fennelly, Alameda; Reyla Graber, Alameda; Joe Meylor, Alameda (submitted letter); Monica Pena, Alameda (submitted handout); Jenny Curtis, Alameda (submitted handout); Ron Schaeffer, Alameda; Carol Stone, Alameda (not present); Mary Jane Beddow, Alameda; Mark Haskett, Alameda; Scott Corkins, Alameda; Stephen Hahn, Alameda; Kimberly Thomas, Alameda; Judy Beyerstedt, Alameda (submitted letter); Mark Dombeck, Alameda; Monica Dombeck, Alameda; Paula Rainey, Alameda (submitted comments); Morgan, Alameda; Patricia Gannon, Alameda; Anders Lee, Alameda; Vern Marsh, Alameda; Ani Dimusheva, Appellant (submitted letter and petition); Victoria Ashley, Alameda (not present); Susan Battaglia, Alameda (submitted comments); Mallory Penney, Alameda; Bart Wise, Alameda; Valerie Ruma, Appellant; Frederick Koenen, Alameda (not present); Kristi Koenen, Alameda (submitted comments); David Kirwin, Alameda; George Hubbard, Alameda; Christopher Buckley, AAPS; Carl Lasagna, Alameda; Peter Lamson, Alameda (not present); Robert Sikora, Alameda; Richard Neveln, Alameda; Heather Curtis, Alameda; Theresa Fossoff, Alameda (not present); Bill Smith, Alameda; Linda Hansen, Alameda (presented drawing); Ivan Rudenko, Alameda (not present); Gina Shepard, Alameda; Margarita Dorland, Alameda (not present); Alex Helperin, Alameda (not present); Vicki Varghese, Alameda (not present); Sia Bayat, Alameda; Michael Cate, Alameda; and Pat Bail, Alameda.



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Following Gina Shepard's comments, Mayor Johnson called a recess at 11:37 p.m. and reconvened the Regular City Council Meeting at 11:50 p.m.

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When the meeting was reconvened, Councilmember Matarrese moved approval of continuing the meeting past midnight.

Vice Mayor Gilmore seconded the motion, which carried by unanimous voice vote - 5.

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Following Frank Lopez, there being no further speakers, Mayor Johnson closed the public portion of the Hearing.

Councilmember Daysog stated that the cost for the Cineplex and historic renovation is approximately \$13 million dollars; the report compares the \$13 million cost against \$5.9 million in revenues; there is a negative of \$7.1 million; inquired whether interest is included in the \$13 million cost.

Tim Kelly, Keyser and Marston Associates, responded in the negative.

Councilmember Daysog inquired what the amount would be if interest were included.

Mr. Kelly responded tax increment should be included if interest is included; stated the bonds are already funded; all sources of income that pay for the City's obligations, including tax increment used to fund the debt service on the bonds and garage income, are not included.

Councilmember Daysog inquired whether there was an estimate of how long it would take for property values to raise in order to recoup the \$7.1 million.

Mr. Kelly responded the Community Improvement Commission (CIC) already has the income to pay for the approximately \$15 or \$16 million in bonds which have been sold; the \$7 million for the parking garage is not paid for yet; some sources of funds would be the theater and ground lease rent.

Councilmember Daysog inquired whether the sources of funds would equal \$5.9 million.

Mr. Kelly responded in the affirmative; stated the source of funds would be \$5.9 million in present value against a loan of \$7 million

present value.

Councilmember Daysog stated the \$13 million bonds issued for the Cineplex and historic theater would need to be paid back.

Mr. Kelly stated that the bonds have already been issued based upon the CIC's cash flow; the income from the theater project does not have to repay the bonds; the bonds are financed by CIC's existing cash flow.

Councilmember Daysog inquired whether the cash flow is tax increment.

Mr. Kelly responded in the affirmative; the cash flow is the existing tax increment; the tax increment does not come out of the General Fund and is not money that would have gone to the General Fund; the tax increment is redevelopment money that has to be used for certain limited purposes; redevelopment law prohibits the money from being used for Police and Fire services.

Councilmember Daysog inquired whether tax increment could be used for public infrastructure in a redevelopment area, to which Mr. Kelly responded in the affirmative.

Councilmember Daysog inquired whether General Fund costs that are used for public improvements in a redevelopment area could be covered by redevelopment funds.

Mr. Kelly responded that the purpose of the redevelopment financing is to provide economic development, stimulate growth, and remove blight; redevelopment financing is not intended for public improvements that would have otherwise occurred; theoretically, redevelopment funds could be used.

Councilmember Daysog stated that the argument is that redevelopment money cannot be used for General Fund type activity with regards to infrastructure.

Mr. Kelly stated redevelopment money is all the tax increment captured above a certain base; redevelopment law limits the City to use the funds for remediation of blight.

The Development Services Director stated that redevelopment law is very clear that new improvements need to be made; funds cannot be used for operating and maintenance costs; redevelopment law findings that state there are no other public monies available must be made to do an improvement, like a street.

Councilmember Daysog stated that there is an argument that redevelopment dollars cannot be used for infrastructure improvements that are generally covered by the General Fund Capital Improvement Budget; inquired whether redevelopment dollars could be used under certain circumstances.

The Development Services Director responded in the affirmative; stated redevelopment dollars cannot be used to pay for street resurfacing; pass-through agreements with the County preclude the City from using redevelopment project tax increment on certain projects, such as Estuary Park.

Councilmember deHaan inquired what projects have been obligated with the \$47 million bond issue.

The Development Services Director responded the projects include the new Library and matching funding for some grant money for Webster and Park Streets; there was an existing obligation as part of the construction of the Marina Village Project; \$13 million went to capitalize the payments on the long-term obligation to repay the infrastructure improvements made at Marina Village years ago.

Councilmember deHaan inquired whether \$200,000 was used for intersection remediation at Otis and Park Streets.

The Development Services Director responded that money for intersection remediation came from regular operating tax increment revenues, not bond money.

Councilmember Daysog stated the report states that project results in a net cost to the CIC; that he understands Mr. Kelly's comments regarding estimated CIC costs; the \$13 million bond will be paid from the increase in tax increment in the redevelopment area, not the project itself; the staff analysis compares the estimated CIC costs against the estimated CIC revenues, which results in a \$7 million negative.

Mr. Kelly stated there is a cost; however, the City will own the historic theater, the parking garage and the land underneath the theater; the City is buying assets.

Councilmember Daysog inquired whether the purpose of redevelopment is to generate value; inquired whether the City would collect property taxes if the City owns the assets.

The Development Services Director responded one objective of redevelopment is to create value; redevelopment also serves to build the projects which the community needs; the existing tax

increment supports the construction of the parking structure; the parking structure creates additional business opportunities and new value; the money is also used for projects that the public has decided are important; the historic theater renovation is such a case and is an eligible, legal project; the lion share of the \$5.9 million concerning Councilmember Daysog is the construction, stabilization and restoration of the historic theater; part of the expenditure that would never be recovered is for restoring the theater, which was considered of great concern to the community; staff never reviewed a reuse of the building that would recover the investment; the theater did not have a private sector investor all these years because nobody in the private sector could figure out what could go into the building to substantiate or support the investment.

Councilmember Daysog inquired why the report shows a net negative, to which Mr. Kelly responded redevelopment law requires disclosure.

Vice Mayor Gilmore stated part of the reason for the negative net present value is because the Council directed staff to preserve the historic theater; Council felt the theater would continue to deteriorate if the City did not move forward with preservation; the project cost would not be so high if restoring the theater was not so valuable and the City wanted to build a new theater and parking garage, without the historic theater; the project is running in the red because so much money is being spent for the historic theater infrastructure; inquired whether the historic theater is a financial albatross.

The Development Services Director responded public entities restore buildings because of the appreciation of the value of the asset to the community, on which an economic value cannot be placed; a building use that could support the project costs would result in the building being butchered to increase density, such as public storage; said type of use would not meet the community's restoration and preservation goals.

Councilmember Matarrese inquired whether the parking structure design/build allows the design to be modified.

The Development Services Director responded that one of the goals of using the design/build process was to ensure that the project was built efficiently with as little public money as possible; the design/build process allows designers and construction to come together to yield the most efficient garage; the exterior design review is being resolved to prevent the design/build contract from growing in response to design issues; pinning down the design up front provides the additional guarantee that there would be no

questions about what the design/build team put together; the objective was to have the most efficient, least expensive project, with an eye on speed; the exterior design of the project needs to be known before moving forward, otherwise an intolerable budget situation could be created; design/build should reduce the number of changes later and create a more controlled process for bidding the project and getting the best price and product for the community.

Councilmember deHaan stated that one of the first tasks was to review alternate parking areas in 1999 during the visioning process; inquired what were the alternate areas.

The Development Services Director responded she does not know what the alternate parking areas were in 1999; subsequent parking analysis identified alternative sites, including the Elks Club, Video Maniacs and the Long's site.

Councilmember deHaan stated that he did not recall Video Maniacs being one of the sites.

Councilmember Matarrese stated that Video Maniacs was included as an option in the 2000 Downtown Vision Report.

The Development Manager stated that six studies reviewed different sites since 1972; all studies considered Video Maniacs as one of the top sites.

Councilmember deHaan stated the 2000 parking analysis indicated that 498 parking spaces were needed for 1,500 theater seats; inquired whether the Development Services Director was aware of the analysis.

The Development Services Director responded in the affirmative; stated the analysis was fairly speculative.

Councilmember deHaan stated the analysis indicated that a certain number would park in the lot and some patrons would park in other areas; Park Street has been so successful in recent years that the 200 spaces [in other areas] that were going to be used to support the theater are being utilized now.

The Development Services Director stated the environmental assessment included completion of a new traffic and parking assessment to update the information and confirm that there would be opportunities for shared parking; the commercial district setting of the project means people will have already parked somewhere else.

Councilmember deHaan inquired whether the factor used for the first study has increased.

The Development Services Director responded the new trip manual published after parking work was completed has identical numbers on reverse days; the factors used for Saturday are now the factors that apply to Friday peak parking and vice versa; the Saturday position has been improved significantly.

Councilmember deHaan inquired whether said information has been provided.

The Development Services Director responded in the negative; stated that the only manual of record published at the time the work was completed was used for the [first] study; using the new trip manual staff decided whether changes needed to be made; the decision was that, with the reverse [of Friday and Saturday peaks], an even worse case situation had been analyzed [in the first study].

Councilmember deHaan inquired whether 200 spaces would overflow into other areas because the parking structure would not be able to handle all parking needs.

The Development Services Director responded said case would only occur at one or two peaks a week; 1750 seats were analyzed; the scope of the assessment for the environmental review was a bigger project because staff did not have the final numbers; the proposed project is smaller.

The Development Manager stated that the assumptions in the traffic and parking analysis were conservative, assumed 100% occupancy of the 1750 seats and did not include cross trips; the numbers in the parking study are adequate for meeting the parking demand.

Councilmember deHaan inquired whether the numbers are adequate to support the theater and the new activity on Park Street, to which the Development Manager responded in the affirmative.

Councilmember deHaan inquired whether the parking would support peak times with activities at the Masonic Temple, Kaufman Auditorium, the Elks Lodge, and the high school.

The Development Services Director responded that staff did not factor in that every facility in town could have an event on the same night; the analysis is based on existing trip data at certain times of the day.

Councilmember deHaan stated the theater is not used during peak hours; the theater peak time is later.

The Development Services Director stated the parking studies included a desire for a much bigger parking structure; a 508 space parking garage was contemplated when the Long's parking lot was discussed; a long-term parking plan is still needed.

Vice Mayor Gilmore stated that existing tax increment covers the bonds that have already been issued; requested staff to address how the Housing and Urban Development (HUD) loan would be paid back, the developer's buying and selling options, and how much capital the developer is investing in the project; stated that there has been a lot of discussion regarding scaling down the theater or just doing three screens; the number one goal of the Downtown Vision Plan was to restore the historic theater for first run movies.

The Development Services Director stated all except \$3.5 million of public investment in the project would go to the historic theater and parking garage; the developer will provide his own furniture, fixtures, and equipment (FF&E) in the historic theater; the developer will bring \$5.3 million in equity and bank financing; the developer has met financing commitments outlined in the Disposition and Development Agreement (DDA); the bank financing includes an SBA (Small Business Administration) portion, which has additional control and rigor because of the examination SBA completes; the developer would build the Cineplex; the City will own the land under the Cineplex and own the historic theater and land; the City will lease the historic theater and the ground under the Cineplex to the developer; a \$700,000 grant will pay for vertical elements, such as the elevator, ramps, Americans with Disabilities Act (ADA) exiting and life safety exiting; the Cineplex entrance will be used to meet ADA requirements; there are two methods for repaying the \$2.8 million loan in the DDA; \$1.4 million will begin to be repaid in the seventh year after the developer's FF&E financing would be retired; the other \$1.4 million will be paid in a percentage rent, which is 17% of the project gross above a certain threshold; DDA provisions preclude the developer from selling or refinancing without paying off the loans; the historic theater retail rental income will be retained by the CIC; the developer has the option to purchase the the historic theater and the land under the Cineplex from the CIC after successfully operating for five years; the developer would have to buy both the historic theater and Cineplex land; the purchase price would be the amount that the CIC paid.

Vice Mayor Gilmore stated that there is a lot of concern over the assumptions about ticket sales; the developer has to sell tickets to meet his obligations to bankers and the CIC; the concern is that

not enough tickets will be sold and that the project will fail; requested staff to address said assumptions.

The Development Services Director stated the assumptions are extremely conservative; staff assumed the project would gross approximately \$2 million per year in ticket sales and another \$900,000 to \$1 million in concessions, for a total of \$3 million; the financial analysis has determined that the project obligations to the CIC would be met at the achievement of said \$3 million; the percentage rent is based on the business producing \$3 million; the assumption is that 60-65% of the Alameda market will be captured; the Bay Area is an anomaly with respect to theater-going trends; Bay Area theater attendance is almost twice the national average; theaters in the area are doing twice the amount of business that staff estimated per screen; staff also wanted to ensure that the project has enough revenue to maintain the facilities; DDA provisions require that the buildings need be operated in a certain manner.

Councilmember Daysog inquired what the square foot rent would be for the historic theater.

The Development Services Director responded staff would have to calculate the amount; the rent has been \$2,000 per month for the past few years.

Councilmember Daysog inquired what is the square footage of the historic theater, to which the Development Services Director responded that the entire building is 33,000 square feet, which includes space that would not be used.

Mayor Johnson requested an overview of the current condition of the historic theater and the status of the acquisition.

The Development Services Director responded the Council took action to begin the eminent domain process late last spring; the building estimate, based on an appraisal, was deposited with the courts; the owner has picked up the deposit and advised the court that he would not contest the sale and is only interested in the value; the value will now be established through the eminent domain process; the City will take possession of the theater on October 3 or 4; the City has worked with the owner to gain access to the building and begin work, such as investigation of the ground water problem in the basement.

Mayor Johnson noted that the building has been used as a skating rink, disco, roller rink and gymnastics auditorium.



The Development Services Director stated that the City has been working with the Architectural Resources Group (ARG) to assess the building; ARG has worked with engineers and other specialists to determine what needs to be done to bring the building up to code and to repair, reverse and restore some of the damage that has been done; a lot of seismic work has to be done, such as reinforcing the concrete façade marquee area that is only held up by four redwood posts; fire sprinklers have to be installed; the electrical and plumbing work has to be redone; the water in the basement is a combination of a leak from a storm drain as well as ground water intrusion.

The Development Manager stated that the lobby carpet was replaced; the mezzanine carpet is torn; the lobby mirror, mezzanine mural, and light fixtures have been removed; the curtain has suffered water damage; the floor of the auditorium has been built up; buffer walls have been installed along side walls; holes were made in the auditorium ceiling for lighting; there is significant water damage along the alley due to a storm drain.

Councilmember deHaan stated the retail revenue would be received from the historic theater; inquired whether retail revenue would be received from the Cineplex.

The Development Services Director responded in the negative; stated that the developer is building the Cineplex with his own financing and would receive the rents from his own retail space.

Councilmember deHaan inquired whether the rent revenue was significant to the developer to make the project work.

The Development Services Director responded that the funding is part of the picture; the Cineplex retail is only 3,400 square feet.

The Business Development Division Manager stated the revenue from the retail space counts toward the percentage rent the developer will pay.

Councilmember deHaan stated one of the seven auditoriums in the new Cineplex has 78 seats; the historic theater balcony accommodated 150 seats; inquired what is the concern with renovating the balcony.

The Development Services Director responded that the DDA allows the developer to use the balcony at a later point at his own expense if he chooses; the spaces are not soundproof, provide 62-64 seats each and would be used to show boutique films.

Councilmember deHaan inquired whether the Cineplex building could be downsized if one of the theaters and some retail were removed; stated that he is concerned with protrusions going in all different directions; inquired whether the footprint could be reduced.

The Development Services Director responded the buildings are linked; eliminating a theater from the Cineplex top level would impact the value of what remains and the project's ability to support the additional cost of going to a second floor; some of the value supports the construction cost.

Councilmember deHaan stated protrusions usually cost more money; removing the 79-seat theater would allow the building to be brought back; review of other options would allow reduction of mass; that he has concerns about design.

Kyle Conner, Project Developer, stated more screens are needed, not less; eliminating a screen on the second level of the Cineplex would leave only nine screens; that he would like to have more than ten screens; that he would have a problem with reducing the number of screens.

Mayor Johnson inquired whether Mr. Conner's plan would be to go forward with the balcony eventually, to which Mr. Conner responded in the affirmative.

Councilmember Daysog inquired what the \$72,000 in rent for the historic theater equals per square foot.

Mr. Conner responded the ground floor is approximately 19,000 square feet, including retail; the cinema would be approximately 15,000 square feet.

Councilmember Daysog stated that movie theater square footage comparisons are a way to gauge whether the rent is appropriate.

Mr. Conner stated debt service for construction should be considered as rent because he has a ground lease and does not own the property; rent would be approximately \$1.30 per square foot when considering all of the components to service the debt and rent for the facility.

Councilmember Daysog inquired what the figure would be if debt service were not considered, to which Mr. Conner responded \$0.40 per square foot.

The Development Services Director stated that the rent is based on revenues.

Councilmember deHaan inquired how many seats the historic theater had on the main floor, to which the Development Manager responded 2,000 seats.

Councilmember deHaan inquired how many seats would be accommodated now, to which the Development Manager responded 484 seats.

Councilmember deHaan inquired whether all the space would be utilized.

Mr. Conner responded old seats were spaced 32 inches apart; new seats will be spaced 45 inches apart.

Councilmember deHaan inquired whether the 484 seats would utilize all the space.

Mr. Conner responded in the affirmative; noted old seating areas underneath the balcony would be used for offices and concessions.

Councilmember deHaan inquired whether the historic theater lobby area would be adequate for a concession stand, to which Mr. Conner responded in the negative.

Councilmember Daysog inquired whether rent was compared with other cities or facilities.

Mr. Kelly responded one integrated business is being run in two buildings; rent was run against total gross and was around 15%; the calculations were run on gross, rather than per square foot; the rent is based upon the estimated volume of business.

Councilmember Daysog inquired whether the industry reviews rents on a square-foot basis.

Mr. Kelly responded typical rent would be \$1.35 to \$1.85 per square foot in a suburban area; Alameda's situation is unique; the rent was based on estimated gross sales to be fair to both sides.

Councilmember Daysog inquired whether there was a blended figure for both the new Cineplex and the historic theater, to which Mr. Kelly responded that the developer is building the Cineplex building.

Mayor Johnson stated one of the project goals was to save the historic theater; theaters built today are not like the historic theater; the developer is taking on a lot of space that would not be taken on for a modern theater; the project would be a lot easier

if preserving the historic theater were not a goal; there are obstacles in determining how to go forward with the project and save the historic theater at the same time.

Mr. Kelly stated the historic theater costs over \$9 million for 484 seats; \$9 million is enough money to build a 12-plex.

Mayor Johnson stated eight years ago, the Council gave direction to staff to develop a project that would save the Alameda Theater and have it used for first run movies.

Mr. Conner stated the percentage rent structure was designed to help protect the downside and have everyone share in the upside; the City shares significantly [in the upside] more than any other deal; the amount is three to four times what an average percentage rent would be in any commercial theater in a suburban setting.

Councilmember Daysog inquired whether the City's share of the percentage rent in net present value terms over 20 to 30 years is \$190,000.

Mr. Kelly responded an aggressive assumption that the theater will get 100% of the Alameda market would mean the City will have some significant percentage rents; if the theater does very well, the City will receive 15 to 17%, will share in that [profit] and receive what is believed to be a fair rent.

Mayor Johnson inquired whether 15 to 17% was based on gross or net, to which Mr. Kelly responded gross, including concessions.

Vice Mayor Gilmore stated everyone seems to agree that the historic theater should be restored and preserved; the money being spent to restore the theater could build a 12-plex; money is being put into the historic theater because it almost becomes a public amenity; a public amenity is not expected to make a return; the new Library is not expected to make a return.

Councilmember Daysog noted residents voted for the new Library.

Vice Mayor Gilmore stated the community has clearly expressed that restoration and preservation of the historic theater is valuable; the high cost of rehabilitating the theater makes a financially neutral project difficult; opinions about the rest of the project differ; restoring the theater does not come cheaply.

Mayor Johnson stated there have been on-going attempts to install parking in the Park Street area since the 1970's; there was effort to save the theater in the 1980's; the project will not solve all

parking problems on Park Street; Webster Street potential parking problems need to be reviewed; the City has the opportunity to move forward with the project; the developer is willing; financing is available; there have been years of public study; that she has not come across one person in Alameda who has said do not bother saving the historic theater; saving the historic theater is not easy; no one has attempted to run the theater for 25 years; that she is trying to do what she believes is best for Alameda in the long term.

Councilmember deHaan questioned whether adding a multiplex cinema to the historic theater makes the project economically viable; stated that he is concerned about the movie marketplace; a minimum of 15 screens seems necessary to make money; seven screens definitely will not make money; that he is emphatic about getting parking on Park Street; the theater should not overtake the benefit of having a parking structure; the [Cineplex] design is ugly; the trouble is placing the structure on a small parcel; there is not enough money for the project.

Mayor Johnson stated the project would be easier to manage financially if one of the goals was not saving the historic theater.

Councilmember Matarrese stated one reason for the [financial] shortfall is because the City is paying for assets that will be acquired, such as the parking structure and theater; evidence supports the financial feasibility of the project; requested an explanation of the Planning Board action, including what approval meant and what changes were made; requested the architect to explain the basis of the design.

Rob Henry, The Henry Architects, stated that he inherited the project after Michael Stanton Architectural firm designed the building, which gave direction as to the massing of the building; that he tried to include scale, texture and materials that would be compatible and advantageous to the downtown atmosphere; the project was very difficult; the building's constraints cannot be ignored; the building has to have certain proportions in order to be a successful theater design, which have led to difficult solution with the building overhangs; that he has tried to cooperate with the Design Review Board, the Planning Department, and the Planning Board to address all concerns; the Planning Board placed a couple of conditions on the design; one condition was to add some additional texture to the panels on the corner of the building; many options were studied; the decision was made to enhance the context of the design, rather than introducing something totally foreign to the basic design of the building; the established design

for the panels around the corner of the building was carried into more detail to provide a greater sense of continuity for the overall design.

The Development Services Director stated there was a fairly long pre-design discussion; first, the interiors and the project that the developer wanted to build were done by Mr. Henry and given to Michael Stanton who assisted through the design guideline process and the public process; then, the Historical Advisory Board and Planning Board established the design criteria addressing the issues that the community thought were important; the criteria was provided to the Architect, which were used as the basis for beginning the project.

Councilmember deHaan inquired whether the Cineplex and parking garage should have continuity of design; stated that he would like the buildings to fit together; currently, the two buildings stand alone.

Mr. Henry responded the Cineplex and parking garage are two different buildings with different functions; applying one design to one type of building and expecting that design to apply to another type building is difficult; the design comes out of the internal organization, function and requirements of the project; there is some relationship between the parking garage and Cineplex, which was done purposely with vertical columns; the garage does have a horizontal emphasis, which has been incorporated into the Cineplex design to tie the buildings together; the essence of the buildings is similar.

Vice Mayor Gilmore inquired whether Mr. Henry stated that he is attempting to relate the horizontal elements of the parking structure to the Cineplex, in spite of the historic theater having mostly vertical elements.

Mr. Henry responded in the affirmative; stated architects debate whether or not a new building built in a historic context should be built to look like the historic building or be something of its own character; both sides have pros and cons.

Councilmember Matarrese inquired whether the State guidelines prohibit imitation of a historic building.

The Development Services Director responded that the Secretary of Standards prohibits mimicking or creating a building that would give the false impression that it was built in 1920 instead of 2005; the Secretary of Standards encourages incorporating historic features and elements into the design.

Councilmember deHaan inquired whether or not rounding off the corner would be considered mimicking.

The Development Services Director responded rounding off would not be mimicking; stated mimicking would be trying to make people believe the building is art deco.

Councilmember deHaan stated the Cineplex and parking structure corners could be smoothed; where the Cineplex steps back from the historic theater there are funny, square windows.

The Development Services Director stated that she met with AAPS last week; AAPS feels strongly about the need for a much stronger vertical element; at a number of different public meetings addressing design, people liked the glass lobby element.

Councilmember deHaan stated that he is concerned about the long, 20 to 21 inch, protrusions, which do not match the downtown district and result in an awkward mass; that he would be happy if the project was one-story; however, more screens are needed to make the project financially feasible.

Councilmember Daysog thanked everyone for taking the time to voice opinions; stated that the Council would vote on the appeal of the Planning Board's decision regarding the project design and other design related elements tonight; that he is troubled by the business deal aspects of the project and continues to struggle over what constitutes the proper balance between fulfilling an earnest desire for a historic movie theater that the community could be proud of and the wise and prudent use of public dollars; that he is also troubled by the fact that the cinema project is a negative \$7 million and the new information tonight regarding the \$0.40 per square foot [rent] when market is \$1.35; that the Council has a fiduciary responsibility to exercise leadership when the public's appetite for amenities conflicts with fiscal prudence; that he understands the desire to restore the historic theater and that some people want the Cineplex; however, he is struggling with the rent; \$0.40 per square foot is one-third of the market rate.

Councilmember Matarrese inquired whether the \$1.35 market rate is for commercial space or theater space, to which the Development Services Director responded the rate is for brand new theater space.

Councilmember Matarrese inquired whether data on other historic theaters, such as the Fox Theater in Oakland, was available.

The Development Services Director responded that the Fox Theater is non-profit.

Councilmember Matarrese stated the comparison [of rent with brand new theater] is not fair.

Councilmember Daysog stated that there is a fair comparison because people are going to walk into what amounts to a brand new historically restored theater.

Councilmember Matarrese stated the building being historically restored makes a difference.

Councilmember Daysog stated the historic restoration of the theater is on the City's dime.

Councilmember Matarrese stated the City would own the building.

Councilmember Daysog stated the City should charge a rent that is at least as close to fair market as possible.

The Development Services Director stated that the developer would be happy to lease at \$1.35 per square foot if the City wanted to build the cinemas.

Councilmember deHaan stated the impact of the project on the downtown district is the real drive; that he cannot place a dollar figure on how the project will improve the environment and make the area more viable; catalyst projects are built to make things happen; Park Street has a new vitality in spite of the City; John Knowles was honored tonight; without real public funding, Mr. Knowles set a standard of small, unique stores; 70% of the merchants in stores ten years are gone because the City did not set up an environment to retain businesses.

Councilmember Matarrese stated John Knowles project was not done in spite of the City and with no public dollars because the Redevelopment Manager's time was paid by the City's redevelopment agency; part of the project's value is that the City is getting first run movies for \$0.40 per square foot and people will spend money in town, rather than elsewhere.

Councilmember Daysog stated that said value could also be realized at \$1.10 per square foot.

Councilmember Matarrese stated financial questions are outside whether or not the Council should uphold the Planning Board's decision, which is about design.



Mayor Johnson stated the rent is a percentage, not a straight \$0.40 per square foot.

Valerie Ruma, Appellant, stated the Council is not reviewing the environmental aspect, such as traffic; an environmental impact report is required by the law before the project can go forward.

The Assistant City Attorney stated that the California Environmental Quality Act (CEQA) requires either a negative declaration or Environmental Impact Report (EIR); a letter from the Appellant's attorney raised an issue that an EIR would have been required if a fair argument was raised at the time the negative declaration was initially adopted; the mitigated negative declaration was adopted in May; pursuant to CEQA, the mitigated negative declaration is presumed, by law, to be adequate if not challenged within thirty days of approval; the mitigated negative declaration was not challenged.

Ms. Ruma stated that the City Attorney's office provided contradictory information that there was no specific appeal process and the appeal tonight could be in written or oral form.

The Assistant City Attorney stated the substance of the design review could be appealed but that the environmental review is not being addressed tonight.

Mayor Johnson requested that the Assistant City Attorney discuss the matter with Ms. Ruma.

Vice Mayor Gilmore stated the parking structure is a design/build project; a picture was shown which was very similar to the proposed design, except that the picture seemed more vertical with narrower opening; inquired whether narrow openings would be an issue from a construction standpoint.

The Development Services Director responded that she could not answer whether the openings could be made smaller; there are a number of structural issues relative to the parking garage because of other design achievements, such as the least amount of columns possible inside the interior garage to provide maximum safety and view; the design is contemplated to carry a lot of load on the outside walls; that she would obtain an answer and provide the information to Council.

Councilmember deHaan inquired whether there could be some type of movement on the long, bare sidewall of the parking garage to give it a feel other than just a flat wall.

The Development Services Director responded the wall would be built on the property line; that she does not have the answer since the structural piece has not been completed; a process has been started to provide artists with an opportunity to prepare an attachable mural.

Councilmember deHaan stated that the flat wall on the historical theater has treatment and movement; although the theater cannot be replicated, movement can be done.

Councilmember Matarrese stated the picture shows a wall with four ins and outs.

The Development Services Director stated there is some articulation.

The Business Development Division Manager stated that the picture presented would not be the final design; the City has a public art policy; the Public Arts Commission received five proposals from local artists to create a design based on the adopted policy.

Councilmember Daysog moved approval of accepting the appeal.

Vice Mayor Gilmore inquired whether Councilmember Daysog's motion was to reverse the decision of the Planning Board.

Councilmember Daysog responded in the affirmative.

Councilmember deHaan seconded the motion.

THE MOTION FAILED by the following voice vote: Ayes: Councilmembers Daysog and deHaan - 2. Noes: Vice Mayor Gilmore, Councilmember Matarrese, and Mayor Johnson - 3.

Councilmember Matarrese stated that he looked at the Planning Board's decision and the findings on both the Use Permit and Design Review; he has difficulty with the subjectivity of what is harmonious in design; experts have discussed vertical and horizontal elements; there are constraints with mimicking the historic theater; the project is a good attempt to meet the goals to use the historic theater for first run movies and provide parking in an unobtrusive way; inquired whether the Council could attach conditions.

The Assistant City Attorney responded in the affirmative.

Councilmember Matarrese stated the conditions that he would like to

see included in the motion to uphold the Planning Board's decision are a condition to have the façade treatment on the Oak Street portion of the parking structure provide vertical elements similar to the ones presented by AAPS and a condition to have the treatment of the Central Avenue façade of the Cineplex provide a less modern treatment of the window in between the historic theater and the corner portion of the Cineplex second-story view spot that is curved outwards.

Vice Mayor Gilmore stated AAPS presented two pictures.

Mayor Johnson requested that the picture be shown.

Councilmember Matarrese stated the picture he was referring to was not the garage in Staunton, Virginia.

Vice Mayor Gilmore stated the picture was of the garage with openings.

The Business Development Division Manager stated the picture is of a garage in Walnut Creek and displayed the picture.

Councilmember Matarrese stated the Council direction was to have the [Cineplex] architecture be less modern than original renderings.

Mayor Johnson concurred with Councilmember Matarrese.

Vice Mayor Gilmore inquired whether Councilmember Matarrese referring to "less modern" applies to the overhang that is on the front of the Cineplex.

Councilmember Matarrese responded in the affirmative; stated that he was referring to the glass lobby that is curved.

Vice Mayor Gilmore inquired whether Councilmember Matarrese had any direction in defining less modern.

Councilmember Matarrese responded squared off with some sloping treatments; however, he is not an architect; the direction should be general; the architect should come back with something less modern for that window specifically and the architect should understand the idea for the parking structure from the picture.

Mayor Johnson requested that the colors be more compatible; further requested staff to review the possibility of having the ticket booth out in front to make the historic theater look like it used to look; stated the booth would not have to be useable.

Councilmember Matarrese moved approval [of upholding the Planning Board decision with the conditions outlined].

Vice Mayor Gilmore seconded the motion.

Under discussion, Councilmember Daysog stated that he would not support the motion because he is concerned about the business deal; charging rent of \$0.40 per square foot gets the City \$3 million; charging rent of \$0.80 per square foot would greatly increase the amount and is still below the \$1.35 per square foot market figure.

Mayor Johnson inquired whether the current colors of the historic theater are the original colors.

The Development Manager responded the original colors are not known; however, the original colors were light.

Councilmember deHaan stated that he is concerned about putting too much on a small parcel; that he would like to see downscaling to bring the project into some proportion; since downscaling is not occurring, he would not support the motion.

On the call for the question, the motion carried by the following voice vote: Councilmembers Gilmore, Matarrese, and Mayor Johnson - 3. Noes: Councilmembers Daysog and deHaan - 2.

#### ORAL COMMUNICATIONS, NON-AGENDA

(05- ) Michael Robinson, San Francisco Bay Resort Club, submitted a letter to the Council; stated that he has been working with Fish and Wild Life, the Veterans Administration, and the Veterans Community Resource Federation (VCRF) to create a plan for Alameda Point that provides for the needs of said entities; requested the cooperation of City staff in submitting the resort plans as part of the upcoming environmental review.

(05- ) Pete Clark stated the development of Alameda Point would include transit opportunities.

(05- ) Connie J. Rozenkowski, VCRF, stated that there is a proposed plan to convert the Bachelors' Enlisted Quarters at the former Navy Base into a cultural center that would provide programs for veterans, low income families, college students, and foster care children leaving the foster care system; the programs would be funded by the resort development.

(05- ) Bill Smith, Alameda, discussed development.

(05-\_\_\_\_) The following speakers addressed the Theater Parking Structure Public Hearing: Valerie Ruma, Citizens for Megaplex Free Alameda; Ani Dimusheve, Alameda; Jan Schaeffer, Alameda; Rosemary McNally, Alameda; Robb Ratto, PSBA; and Jay Levine, Alameda.

#### COUNCIL COMMUNICATIONS

(05-\_\_\_\_) Consideration of Mayor's nominations for appointment to the Civil Service Board, Economic Development Commission, Golf Commission, Historical Advisory Board, Housing and Building Code Hearing and Appeals Board, and Recreation and Park Commission.

Mayor Johnson nominated Marilyn Ezzy Ashcraft and Robert F. Kelley to the Economic Development Commission and Anthony M. Santare to the Golf Commission.

(05-\_\_\_\_) Councilmember deHaan stated that he received an announcement for a Krusi Park Open House regarding an application by Cingular Wireless to install a new wireless cell site at the Krusi Park tennis courts; the announcement states that Cingular does not own the existing site.

Mayor Johnson inquired who was sponsoring the Open House, to which Councilmember deHann responded the Development Services Department.

Councilmember deHaan stated that he thought that Cingular developed the first cell towers at Krusi Park.

The Business Development Division Manager stated that she would investigate the matter.

(05-\_\_\_\_) Councilmember Matarrese stated that the Harbor Bay Ferry has exceeded the 40% fare box for July; stated that advertisement needs to continue; alternate fuel buying options may need to be considered in the future.

#### ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 2:40 a.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

September 1, 2005

Honorable Mayor and Councilmembers:

This is to certify that the claims listed on the check register and shown below have been approved by the proper officials and, in my opinion, represent fair and just charges against the City in accordance with their respective amounts as indicated thereon.

<u>Check Numbers</u>	<u>Amount</u>
139539 - 140386	2,895,723.11
EFT 129	25,610.00
EFT 130	2,074,653.60
EFT 131	240,864.34
EFT 132	1,002,593.17
EFT 133	98,670.29
EFT 134	2,367,250.76
EFT 135	135,815.53
EFT 136	3,117,183.75

Void Checks:

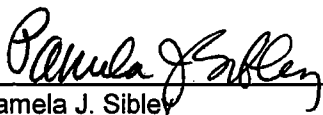
138540	(4,250.00)
139356	(16.00)
139386	(16.00)
140194	(166.65)

GRAND TOTAL

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11,953,915.90

Respectfully submitted,

  
Pamela J. Sibley

## **CITY OF ALAMEDA**

### **Memorandum**

**To:** Honorable Mayor and Councilmembers

**From:** Debra Kurita  
City Manager

**Date:** August 30, 2005

**Re:** Recommendation to Authorize the Mayor to Send Letters to Federal Legislators Supporting S. 1260 (Vitter), S. 113 (Feinstein); H.R. 2353 (Rogers), and H.R. 3431 (Dent), Which Amend Federal Legislation to Further Restrict the Establishment of Tribal Gambling Casinos.

### **Background**

On December 7, 2004, the City Council appropriated funds to secure various services and supplies necessary to engage the community and analyze potential impacts of the proposed Lower Lake Rancheria Koi Nation (Koi Nation) gambling casino in Oakland. On January 18, 2005, the City Council adopted a resolution formally opposing the Koi Nation casino proposal.

On June 10, 2005, the City of Oakland issued a press release indicating that the Koi Nation's casino proposal was no longer viable because their option to purchase property to develop their casino had expired and would not be renewed by the property owner, Legacy Partners. Although the Koi Nation has not formally withdrawn their application to the Bureau of Indian Affairs (BIA) to place the property "in trust", BIA staff have stated that the application is no longer being processed. Therefore, the Koi Nation's efforts to establish a casino in Oakland have been derailed.

### **Discussion/Analysis**

Due to attempts by the Koi Nation and other tribes to develop gambling casinos in urban areas outside of their tribal land, representatives of the United States Congress have introduced legislation which would amend existing federal legislation, such as the Indian Gaming Revenue Act (IGRA), to further regulate how and where a tribe may establish a gambling casino. At the request of the City Council, staff has analyzed four pieces of proposed legislation and recommends formal support for them:

**Report 4-C**  
**9-6-05**

### **U.S. Senate 1260 (Vitter)**

S. 1260 would permit tribes to take land into trust once the Secretary of the Interior determines that a new casino would not have a negative economic effect on any tribe or other local general governmental jurisdiction within a sixty-mile radius of the proposed site. The state legislature and the governor would need to concur with the determination of no negative impacts. S. 1260 would also require the tribe to establish a historical, social, and cultural nexus to the property. Staff recommends sending a letter to federal legislators supporting S. 1260 and further requesting that Senator Vitter strengthen the language to require that negative social and environmental impacts on surrounding jurisdictions, in addition to negative economic impacts, be considered by the Secretary of the Interior with concurrence from the Governor and State Legislature.

### **U.S. Senate 113 (Feinstein)**

S. 113 repeals the declaration that specified lands accepted by the Secretary of Interior for the benefit of the Lytton Rancheria in California shall be deemed to have been held in trust. This bill would prohibit the Lytton Rancheria tribe from establishing a gambling casino in the City of San Pablo. The proposed casino is opposed by all of the jurisdictions neighboring the City of San Pablo due to its potential negative economic, social, and environmental impacts on their communities and the region. Staff recommends sending a letter to federal legislators supporting S. 113.

### **U.S. House of Representatives 2353 (Rogers)**

The "Common Sense Indian Gambling Reform Act" would require the U.S. Department of the Interior (DOI) to find that a tribe has a social, cultural, and historical nexus to the proposed casino site. The DOI must also find that the casino is not detrimental to the surrounding community and "concurrent or contiguous" local jurisdictions, the governor, and the state legislature must concur. HR 2353 provides the City with a greater ability to defeat casino proposals that negatively impact the Alameda community, therefore, staff recommends sending a letter to federal legislators supporting HR 2353. However, staff further suggests that the City encourage the author to amend the bill to expand the area by which impacts are analyzed to include all jurisdictions within 15 miles of the proposed casino site.

### **U.S. House of Representatives 3431 (Dent)**

HR 3431 removes the exceptions to the IGRA and requires all casino proposals to be approved by the governor and the state legislature. This bill would positively impact the City of Alameda when faced with a casino proposal such as the Koi Nation. However, tribes that have the support of the governor and the legislature would maintain the ability to establish casinos without the support of affected local



jurisdictions. Staff recommends sending a letter to federal legislators supporting HR 3431 and further requesting that Congressman Dent strengthen the language to require that all local governments within 15 miles of the proposed casino site also approve any proposed off-reservation casino project.

Municipal Code/Policy Document Cross Reference

This action does not affect the Municipal Code.

Budget Consideration/Financial Impact

There is no fiscal impact associated with the requested action.

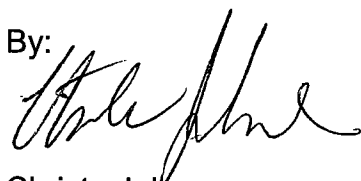
Recommendation

It is recommended that the City Council authorize the Mayor to send letters to federal legislators supporting S. 1260 (Vitter), S. 113 (Feinstein); H.R. 2353 (Rogers), and H.R. 3431 (Dent), which amend federal legislation to further restrict the establishment of tribal gambling casinos.

Respectfully submitted,

Debra Kurita  
City Manager

By:



Christa Johnson  
Assistant to the City Manager

Attachment A: S. 1260 (Vitter)  
Attachment B: S. 113 (Feinstein)  
Attachment C: H.R. 2353 (Rogers)  
Attachment D: H.R. 3431 (Dent)

S 1260 IS

109th CONGRESS

1st Session

**S. 1260**

To make technical corrections to the Indian Gaming Regulatory Act, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**June 16, 2005**

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

**A BILL**

To make technical corrections to the Indian Gaming Regulatory Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Common Sense Indian Gambling Reform Act of 2005'.

**SEC. 2. CONSULTATION WITH STATE, LOCAL, AND TRIBAL GOVERNMENTS.**

Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719) is amended--

(1) in subsection (a), by striking paragraph (2) and inserting the following:

'(2) the Indian tribe has no reservation as of October 17, 1988, and the land is located in the State of Oklahoma and--

'(A) is within the boundaries of the former reservation of the Indian tribe, as defined by the Secretary; or

'(B) is contiguous to other land held in trust or restricted status by the United States for the benefit of the Indian tribe in the State of Oklahoma.';

(2) in subsection (b)--

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) in paragraph (4) (as redesignated by subparagraph (A)), by striking 'paragraph (2)(B)' and inserting 'paragraph (3)(B)'; and

(C) by striking '(b)(1) Subsection' and all that follows through clause (iii) of paragraph (1)(B) and inserting the following:

**Attachment A**

`(b) Exceptions-

`(1) IN GENERAL-

`(A) EFFECT ON COMMUNITY- Subject to subparagraph (B) and paragraph (2), subsection (a) shall not apply to Indian lands for which the Secretary, after consultation with the Indian tribe and officials of all State, local, and tribal governments that have jurisdiction over land located within 60 miles of such Indian lands, determines that a gaming establishment on that land--

`(i) would be in the best interest of the Indian tribe and its members; and

`(ii) taking into consideration the results of a study of the economic impact of the gaming establishment, would not have a negative economic impact, or any other negative effect, on any unit of government, business, community, or Indian tribe located within 60 miles of the land.

`(B) CONCURRENCE OF AFFECTED STATE- For a determination of the Secretary under subparagraph (A) to become valid, the Governor and legislative body of the State in which a gaming activity is proposed to be conducted shall concur in the determination.

`(C) EFFECT OF PARAGRAPH- This paragraph shall not apply to any land on which a gaming facility is in operation as of the date of enactment of the Common Sense Indian Gambling Reform Act of 2005.

`(2) PRIMARY NEXUS-

`(A) IN GENERAL- The land described in paragraph (1) shall be land--

`(i) within a State in which the Indian tribe is primarily located, as determined by the Secretary; and

`(ii) on which the primary geographic, social, and historical nexus to land of the Indian tribe is located, as determined in accordance with subparagraph (B).

`(B) DETERMINATION- For purposes of subparagraph (A), a geographic, social, and historical nexus to land of an Indian tribe shall exist with respect to land that is--

`(i)(I) owned by, or held in trust by the United States for the benefit of, an Indian tribe;

`(II) located within the boundaries of--

`(aa) the geographical area, as designated by the Secretary, in which financial assistance and social service programs are provided to the Indian tribe, including land on or contiguous to a reservation; or

`(bb) the geographical area designated by the Indian tribe during the Federal acknowledgment process of the Indian tribe as the area in which more than 50 percent of the members of the Indian tribe reside in a group composed exclusively or almost exclusively of members of the Indian tribe; and

`(III) located within the geographical area in which the Indian tribe demonstrates that the Indian tribe has historically resided, as determined by the Secretary; or

`(ii) located--

`(I) in a State other than the State of Oklahoma; and

`(II) within the boundaries of the last recognized reservation of the Indian tribe in any State in which the Indian tribe is located as of the date on which a determination under this subparagraph is made.';

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (b) the following:

`(c) Contiguous Land Requirement- Notwithstanding any other provision of this Act, an Indian tribe shall conduct any gaming activity subject to regulation under this Act on 1 contiguous parcel of Indian lands.'.

### **SEC. 3. TRIBAL GAMING ORDINANCES.**

Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) is amended--

(1) in subsection (b)(1)--

(A) in subparagraph (A), by striking `, and' and inserting a semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(C) the class II gaming is conducted--

`(i) on lands that were Indian lands before the date of enactment of this subparagraph; or

`(ii) on land taken into trust for the benefit of the Indian tribe after the date of enactment of this subparagraph, but only if the application of the Indian tribe requesting that the land be taken into trust for the benefit of the Indian tribe stated the intent of the Indian tribe to conduct class II gaming activities on the land.'; and

(2) in subsection (d)--

(A) in paragraph (1)--

(i) in subparagraph (A)--

(I) in clause (i), by striking `such lands,' and inserting `the Indian lands';

(II) in clause (ii), by striking `, and' and inserting `; and'; and

(III) in clause (iii), by striking the comma at the end and inserting a semicolon;

(ii) in subparagraph (B), by striking `, and' and inserting a semicolon;

(iii) in subparagraph (C), by striking the period at the end and inserting `; and'; and

(iv) by adding at the end the following:

`(D) conducted--

`(i) on lands that were Indian lands before the date of enactment of this subparagraph; or

`(ii) on land taken into trust for the benefit of the Indian tribe after the date of enactment of this subparagraph, but only if the application of the Indian tribe requesting that the land be taken into trust for the benefit of the Indian tribe stated the intent of the Indian tribe to conduct class III gaming activities on the land.'; and

(B) by adding at the end the following:

`(10) DEFINITION OF STATE- In this subsection, the term `State' means the Governor of the State and the legislative body of the State.'

#### **SEC. 4. INVESTIGATION AND APPROVAL.**

(a) Powers of the Chairman- Section 6(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2705(a)) is amended--

(1) in paragraph (3), by striking `and' at the end;

(2) in paragraph (4), by striking the period at the end and inserting `; and'; and

(3) by adding at the end the following:

`(5) approve or disapprove the involvement in a gaming activity subject to regulation by the Commission of any 1 of the 10 persons or entities that have the highest financial interest in the gaming activity, as identified by the Commission under section 7(b)(3)(A).'

(b) Powers of the Commission- Section 7(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2706(b)) is amended by striking paragraph (3) and inserting the following:

`(3) shall--

`(A) identify the 10 persons or entities that have the highest financial interest (including outstanding loans, debt-based financing, and other financial interests) in each gaming activity subject to regulation by the Commission; and

`(B) conduct a background investigation of--

`(i) each of the persons and entities identified under subparagraph (A); and

`(ii) any other person or entity, as the Commission determines to be appropriate.'

(c) Tribal Gaming Ordinances- Section 11(b)(2)(F) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(b)(2)(F)) is amended by striking clause (i) and inserting the following:

`(i) ensures that--

`(I) a background investigation will be conducted by the Commission on--

`(aa) each tribal gaming commissioner;

`(bb) key tribal gaming employees, as determined by the Commission;

`(cc) primary management officials; and

`(dd) key employees of the gaming enterprise; and

`(II) oversight of the individuals described in subclause (I) will be conducted on an ongoing basis; and'.

(d) Commission Funding- Section 18(a)(2)(B) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)(2)(B)) is amended by striking '\$8,000,000' and inserting '\$16,000,000'.

## **SEC. 5. CHANGING USE OF INDIAN LAND.**

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended--

(1) by redesignating sections 21 through 24 as sections 22 through 25, respectively; and

(2) by inserting after section 20 the following:

## **SEC. 21. CHANGING USE OF INDIAN LANDS.**

'Before an Indian tribe uses any Indian lands for purposes of class II or class III gaming, the Indian tribe shall--

'(1) submit to the Secretary an environmental impact statement that the Secretary determines to be in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to that use; and

'(2) obtain the consent of the Secretary with respect to the change in use of the Indian lands.'.

## **SEC. 6. EFFECT OF ACT.**

This Act, and the amendments made by this Act, shall not affect any compact or other agreement relating to gaming subject to regulation under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) in existence on the date of enactment of this Act.

*END*

S 113 IS

109th CONGRESS

1st Session

**S. 113**

To modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust.

**IN THE SENATE OF THE UNITED STATES**

**January 24, 2005**

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

**A BILL**

To modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LYTTON RANCHERIA OF CALIFORNIA.**

Section 819 of the Omnibus Indian Advancement Act (114 Stat. 2919) is amended by striking the last sentence.

*END*

**Attachment B**

HR 2353 IH

109th CONGRESS

1st Session

**H. R. 2353**

To make technical corrections to the Indian Gaming Regulatory Act, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**May 12, 2005**

Mr. ROGERS of Michigan (for himself, Mr. EHLERS, Mr. HOEKSTRA, Mr. WOLF, Mr. BOUSTANY, Mrs. JOHNSON of Connecticut, Mr. DENT, Mr. HERGER, Mr. SHAYS, and Mr. PITTS) introduced the following bill; which was referred to the Committee on Resources

**A BILL**

To make technical corrections to the Indian Gaming Regulatory Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Common Sense Indian Gambling Reform Act'.

**SEC. 2. BACKGROUND INVESTIGATIONS AND APPROVAL OF FINANCIAL INTERESTS.**

**(a) Background Investigations-**

(1) GAMING INVESTORS- Section 7(b)(3) of the Indian Gaming Regulatory Act (25 U.S.C. 2706(b)(3)) is amended to read as follows:

'(3) shall conduct or cause to be conducted background investigations on the 10 persons or entities with the highest financial interest (such as loans, debt-based financing, financial backing for equipment or other startup or operation costs, and other financial interests as determined by the Commission) in a gaming operation regulated by the Commission and such other background investigations as may be necessary;'

(2) TRIBAL GAMING OFFICIALS- Section 11(b)(2)(F)(i) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(b)(2)(F)(i)) is amended--

(A) by striking 'conducted on' the first place it appears and inserting 'conducted by the Commission on tribal gaming commissioners, key tribal gaming commission employees, and'; and

(B) by striking 'such officials and their management' and inserting 'such individuals'.

(b) Approval of Financial Interests- Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2705) is amended--

**Attachment C**



(1) in paragraph (3), by striking `; and' and inserting a semicolon;

(2) in paragraph (4), by striking the period and inserting `; and'; and

(3) by adding at the end the following new paragraph:

`(4) approve financial interests between the 10 persons or entities with the highest financial interest (such as loans, debt-based financing, financial backing for equipment or other startup or operation costs, and other financial interests as determined by the Commission) and a gaming operation regulated by the Commission.'.

(c) Commission Funding- Section 18(a)(2)(B) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)(2)(B)) is amended by striking `\$8,000,000' and inserting `\$16,000,000'.

### **SEC. 3. DECLARATION OF INTENT TO GAME ON TRUST LANDS.**

(a) Class II Gaming- Section 11(b)(1) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(b)(1)) is amended--

(1) in subparagraph (A), by striking `and' at the end;

(2) in subparagraph (B), by striking the period and inserting `; and'; and

(3) by adding at the end the following new subparagraph:

`(C)(i) conducted on lands taken into trust before the date of the enactment of this subparagraph; or

`(ii) conducted on lands taken into trust after the date of the enactment of this subparagraph only if the application requesting that the land be taken into trust stated that the Indian tribe intended to conduct gaming activities on such land.'.

(b) Class III Gaming- Section 11(d)(1) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(1)) is amended--

(1) in subparagraph (B), by striking `and' at the end;

(2) in subparagraph (C), by striking the period and inserting `; and'; and

(3) by adding at the end the following new subparagraph:

`(D)(i) conducted on lands taken into trust before the date of the enactment of this subparagraph; or

`(ii) conducted on lands taken into trust after the date of the enactment of this subparagraph only if the application requesting that the land be taken into trust stated that the Indian tribe intended to conduct gaming activities on such land.'.

### **SEC. 4. CLARIFICATION REGARDING CONDITIONS REQUIRED FOR EXCEPTION TO GAMING RESTRICTIONS ON CERTAIN LAND.**

Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(A)) is amended--

(1) by striking `appropriate State and local officials, including officials of other nearby Indian tribes' and inserting `officials of any State or local government or Indian tribe with jurisdiction over land located within 50 miles of the land proposed to be taken into trust'; and

(2) by striking 'and would not be detrimental to the surrounding community' and inserting 'and, after conducting an economic impact study, determines that a gaming establishment on newly acquired lands would not have a negative economic impact on business, government, or Indian tribes within a 50 mile radius of the land proposed to be taken into trust or be otherwise detrimental to the community with such 50 mile radius'.

## SEC. 5. APPROVAL OF COMPACTS BY STATE.

Section 11(d) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)) is amended by adding at the end the following new paragraph:

'(10) For the purposes of State approval under this subsection, the term 'State' shall mean the Governor of the State and the legislative body of the State.'

## SEC. 6. RESTRICTION ON GAMING.

(a) Amendments- Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719) is amended--

(1) by amending paragraph (1) of subsection (b) to read as follows:

'(1)(A) Subsection (a) shall not apply to Indian land of an Indian tribe if each of the conditions in subparagraph (B) are satisfied and the Indian tribe--

'(i) was newly recognized after October 17, 1988 (including those newly recognized under the Federal Acknowledgement Process at the Bureau of Indian Affairs);

'(ii) was restored by legislation, court decree, or any other process after having been terminated by Federal law; or

'(iii) on the date of the enactment of subsection (e), had no lands held in trust by the United States for the benefit of the Indian tribe, no reservation, and no lands held by the Indian tribe subject to restriction by the United States against alienation over which the Indian tribe exercised governmental power.

'(B) The conditions referred to in subparagraph (A) are the following:

'(i) The Secretary determines that the lands acquired in trust for the benefit of the Indian tribe for the purposes of gaming are lands within the State where the Indian tribe has its primary geographic, social, and historical nexus to the land.

'(ii) The Secretary determines that the proposed gaming activity is in the best interest of the Indian tribe, its tribal members, and would not be detrimental to the surrounding community.

'(iii) The State, city, county, town, parish, village, and other general purpose political subdivisions of the State with authority over land that is concurrent or contiguous to the lands acquired in trust for the benefit of the Indian tribe for the purposes of gaming approve.'; and

(2) by adding at the end the following new subsection:

'(e) Notwithstanding any other provision of this Act, an Indian tribe may conduct gaming regulated by this Act on only one contiguous parcel of Indian lands. Such Indian lands must be located where that Indian tribe has its primary geographic, social, and historical nexus and within the State or States where the Indian tribe is primarily located.'

(b) Statutory Construction- The amendments made by subsection (a) shall be applied prospectively. Compacts or other agreements that govern gaming regulated by the Indian Gaming Regulatory Act that were in effect on the date of the enactment of this Act shall not be affected by the amendments made by subsection (a).

*END*

HR 3431 IH

109th CONGRESS

1st Session

**H. R. 3431**

To amend the Indian Gaming Regulatory Act to limit casino expansion.

**IN THE HOUSE OF REPRESENTATIVES****July 26, 2005**

Mr. DENT (for himself, Mr. EHLERS, Mr. PITTS, Mr. ROGERS of Michigan, Mr. AKIN, Mr. PLATTS, Mr. WOLF, Mr. GERLACH, Mr. SCHWARZ of Michigan, and Mr. CANTOR) introduced the following bill; which was referred to the Committee on Resources

**A BILL**

To amend the Indian Gaming Regulatory Act to limit casino expansion.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. LIMITATION ON INDIAN LAND ELIGIBLE FOR GAMING.**

(a) Short Title- This section may be cited as the 'Limitation of Tribal Gambling to Existing Tribal Lands Act of 2005'.

(b) Repeal of Certain Exceptions- Section 20(b)(1) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)) is amended--

(1) by striking subparagraph (B);

(2) in subparagraph (A) by striking `; or' and inserting a period; and

(3) by striking 'Subsection (a) of this section' and all that follows through '(A) the Secretary' and inserting 'Subsection (a) of this section will not apply when the Secretary'.

(c) Approval of State Legislature- Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(A)) is amended by striking 'only if the Governor' and inserting 'only if the Governor and the legislature'.

(d) Applicability- The amendments made by this section shall take effect on the date of the enactment of this Act. Such amendments shall not apply to lands regulated, on the date of the enactment of this Act, by a valid Tribal-State compact that was entered into under the Indian Gaming Regulatory Act before the date of the enactment of this Act.

*END***Attachment D**

# CITY OF ALAMEDA

## MEMORANDUM

Date: August 22, 2005

TO: Honorable Mayor and  
Councilmembers

From: Debra Kurita  
City Manager

Re: Recommendation to Accept the Work of Gallagher & Burk, Inc. for Repair & Resurfacing of  
Certain Streets, Phase 25, No. P.W. 05-04-05

---

### BACKGROUND

On November 6, 2002, the City Council adopted plans and specifications and called for bids for the Repair & Resurfacing of Certain Streets, Phase 23, No. P.W. 08-02-10. On February 4, 2003, the City Council awarded the contract to Gallagher & Burk, Inc., in the amount of \$406,044. The contract contained the option to mutually extend the contract on a year-by-year basis for up to four additional years based on satisfactory completion of the work. Upon each extension, the contract terms and conditions remain the same, except the contract cost will escalate in accordance with the increase in the construction price index for the San Francisco Bay Area as reported in the Engineering News Record (ENR) for the previous calendar year. On October 23, 2003, the first contract extension was executed and an amendment to increase the contract amount to \$336,651.38 was approved. On March 8, 2005 the second contract extension was executed and an amendment to increase the contract amount to \$395,902.36 was approved.

### DISCUSSION

The project has been completed in accordance with the Plans and Specifications and is acceptable to the Public Works Department. No extra work orders were issued for this project. The final project cost is \$388,470.31. The final project cost was 2% lower than the contract amount because the final quantities were slightly lower than the estimated quantity used for budgeting purposes.

### BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for the project is budgeted under CIP# 82-01 using Measure B funds.

### MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

Not applicable.

*Dedicated to Excellence, Committed to Service*

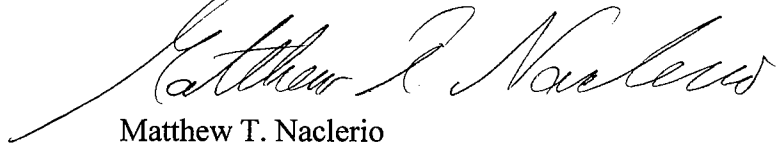
Honorable Mayor and  
Councilmembers

Page 2  
August 22, 2005

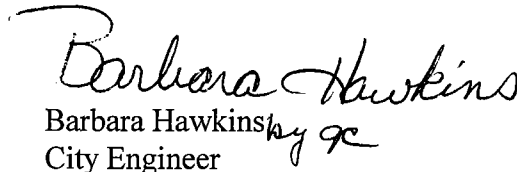
RECOMMENDATION

The City Manager recommends that the City Council accept the work of Gallagher & Burk, Inc. for Repair & Resurfacing of Certain Streets, Phase 25, No. P.W. 05-04-05.

Respectfully submitted,



Matthew T. Naclerio  
Public Works Director



By: Barbara Hawkins  
City Engineer

MTN:BH:gc

cc: Measure B Watchdog Committee

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*Dedicated to Excellence, Committed to Service*

# City of Alameda

## Memorandum

Date: August 26, 2005

To: Honorable Mayor and  
Council Members

From: Debra Kurita  
City Manager

Re: Recommendation to Accept the Request for Proposal for Restaurant and Bar  
Services at the Chuck Corica Golf Complex

### BACKGROUND

On November 1, 1995, Sports Restaurant Inc., DBA Legends and Heroes, began operations as the food and beverage concessionaire at the Chuck Corica Golf Complex. The initial term of five years and two months ended December 31, 2000. Sports Restaurant, Inc. renewed the agreement for a second term, which will end on December 31, 2005.

### DISCUSSION

Given that Legends and Heroes has operated at the Chuck Corica Golf Complex for ten years and that the current agreement will be open for renewal in December, it would be prudent at this time for the City to issue Request for Proposals (RFP) for the provision of these food and beverage services. (See Attachment A.) This process would ensure that the City will continue to receive the maximum value for its investment at the Golf Complex. The proposals will be reviewed and ranked by a sub-committee of the Golf Commission, together with staff. The City has contacted the principles of the current concessionaire to notify them that the agreement will not be extended for a third term and to encourage their participation in the RFP process.

### FINANCIAL /BUDGET CONSIDERATIONS

The revenue from the golf course concessionaire totaled \$199,015 for the past three years, averaging \$66,338 annually. These funds are reinvested in the Golf Complex to support operations and capital improvement projects.

**Report 4-E**  
**9-6-05**

Honorable Mayor and  
Councilmembers

Page 2  
August 26, 2005

RECOMMENDATION

It is recommended that City Council accept the RFP for restaurant and bar services at the Chuck Corica Golf Complex and direct the City Clerk to advertise the RFP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dana Banke', is written over a circular stamp or seal.

Dana Banke  
General Manager, Golf Complex

DVB

cc: Golf Commission



**ATTACHMENT**



**CITY OF ALAMEDA  
ALAMEDA, CALIFORNIA**

**NOTICE INVITING SEALED PROPOSALS  
FOR RESTAURANT AND BAR SERVICES**

Sealed proposals will be received by:

City of Alameda  
Chuck Corica Golf Complex  
1 Clubhouse Memorial Road  
Alameda, CA 94502

Proposal Deadline:  
October 7, 2005, 10:00 a.m.

Questions regarding the attached specifications  
may be directed to:

Dana Banke  
General Manager, Golf Department  
(510) 747-7822

## Introduction

The City of Alameda is inviting prospective restaurant concessionaires to submit qualifications and proposals for the operation of food and beverage services at the Chuck Corica Golf Complex. The successful applicant will be required to provide quality restaurant service, which will include provision of service for breakfast, lunch and dinner, a full liquor license, and limited catering and banquet services for golf tournaments.

## Background

Alameda is an island community located across the bay from San Francisco and to the west of the city of Oakland. Rich in heritage, Alameda is a thriving East Bay community with a population of 80,000 building upon its past achievements to create a better future. Alameda is a 12.4 square-mile "island" city located 20 minutes from San Francisco and in close proximity to the Oakland International Airport, Bay Area Rapid Transit and the Oakland-Alameda County Coliseum.

Recreational opportunities include parks, golf courses, tennis, beaches, fishing and a variety of recreation programs and facilities for children and adults. Alameda's five yacht clubs and seven marinas make it the hub of boating and water-related sports and activities in the Bay Area.

The City of Alameda operates a 45 hole golf complex, night lighted driving range, pro shop, snack bar and a restaurant with full bar services. Last year, 151,607 rounds of golf were played at the Complex including many tournaments.

The restaurant was built in the mid-1950's and can seat 120. A full service bar was added in the 1980's. There is a snack bar on the Earl Fry (North) Course and food and beverage service on the Jack Clark (South) Course is provided by using a snack cart. All food and beverage service is operated seven days a week. The City of Alameda is committed to providing quality restaurant services to the public, including golf patrons, residents and local business people.

## REQUEST FOR QUALIFICATIONS/PROPOSAL PROCESS

### A. Process

The selection process will be completed in one phase. The City will solicit proposals from experienced restaurant operators and select up to three finalists based on experience and financial capacity.

A staff advisory committee will interview the selected finalists and will recommend an operator to the City Manager, who, in turn, will make a recommendation to the City Council. The committee may use consultants in the area of food service, and economics to assist in the evaluation of the operator's proposals and qualifications and may take site visits to restaurants operated by the finalists.

B. Submittal Deadline

Sealed original proposals and four copies must be submitted to the office of the Golf Operations Manager, at the Chuck Corica Golf Complex, 1 Clubhouse Memorial Road, Alameda, California, 94502, by October 7, 2005, 10:00 a.m. Proposals must be clearly identified as the "Restaurant Services Concession For The Chuck Corica Golf Complex". Questions or clarifications should be directed to Golf Operations Manager at (510) 747-7820.

C. Proposal Submission Requirements

Each operator who responds with a proposal is required to provide specific information as identified below. To facilitate review by the City, proposals should be submitted following this format and identifying each item by number.

1. Describe the operator's restaurant experience and facilities owned and/or managed. Provide brief description and photograph of these operations, including the location, size, specific role of operator and a brief financial overview of the success of these restaurants.
2. Describe the operator's previous experience with the ongoing management, operations and ownership of restaurant/bar facilities.
3. Identify the person in charge of negotiations and key personnel who would be involved in decision making. List names, addresses, telephone numbers and type of business (i.e. corporation, limited partnership, etc., including any complaints or legal action operator has experienced during management of a restaurant facility).
4. Present evidence that the operator and any joint venture partners have the financial capability to carry out the proposed commitments. The preferred evidence is the two most recent audited financial statements of the operator and any joint venture partners. However, other evidence may be submitted at the operator's discretion or at the request of the City. NOTE: Financial information may be submitted confidentially under separate cover.
5. Identify and specify the experience of known key consultants, such as marketing consultants, etc.
6. Submit a proposed organization chart for the facility, which includes all employees and their reporting responsibilities.

D. Financial Data

List estimated costs associated with operator's expenditure for restaurant's operation.

1. Training (How much will be spent on staff training?)
  2. Staff weekly schedule (provide salary ranges and part-time or full-time position)
  3. Consulting and design fees
  4. Flatware and glassware (identify by category)
  5. Inventory necessary to operate on a daily basis
    - a. Food
    - b. Beverages
    - c. Linens
    - d. Uniforms
    - e. Furniture
  6. Miscellaneous equipment
  7. Kitchen utensils (i.e. pots, pans, knives, etc.)
- E. Outline operator's proposed method for financing capital and operating expenditures. Provide verifiable evidence of cash and other assets pledged to your proposal.
- F. Present proposed business plan for operation of restaurant food, beverage and retail sales, based on the City's food service objectives.
1. Cash Flow Projections
    - a. Revenues
    - b. Expenses
  2. Concept/Theme

3. Space Configuration
4. Price Range of Patron Check and Average Patron Check
5. Sample Menus
6. Hours
  - a. Breakfast and Lunch
  - b. Catered Lunches
  - c. Dinner
  - d. Lounge
7. Capital Reserves
8. Return on Investment

G. Marketing Plan

Describe marketing events that will create market awareness for the food and beverage facility and retail operation.

1. Media
  2. Advertising
  3. Chamber of Commerce
  4. Preopening Events
  5. Local Events
  6. Other
- H. Prepare a comprehensive marketing plan that addresses methods of attracting and capturing surrounding daytime and nighttime markets.
1. Capture rates within a one mile radius.
  2. Capture rates within a five mile radius.

I. Business Terms

1. Submit proposed lease/rent structure for the facility. (City reserves right to implement different payment structure)
  - a. Minimum monthly fixed rate.
  - b. Percentage monthly rent relative to gross revenue.
  - c. Other proposed terms.
2. Present the proposed lease terms as desired by the operator.
  - a. Initial term.
  - b. Option period.
3. Specify additional lease provisions proposed by operator.
  - a. Commencement of term
  - b. Insurance provisions
  - c. Security deposits
  - d. Termination clauses
  - e. Signs
  - f. Restrictions/limitations
  - g. Gross sales and records
4. Develop financial and service performance clauses that may be used to measure operator's ability to maximize revenue and profitability.

TERMS AND CONDITIONS OF OFFERING

J. City of Alameda Nonliability

All facts and options stated within this proposal and all supporting documents and data they

include, but not limited to, statistical and economic data and projections are based on available information from a variety of sources. No representations or warranties are made with respect thereto. Additional feasibility and marketing studies, etc., are the responsibility of the operator.

K. City Reserves the Right to Reject All Proposals

The City reserves the right to reject any and all proposals.

L. Signature Requirements

Proposals must be signed by duly authorized official of the operator's entity. Consortiums, joint ventures or teams submitting proposals must clearly establish that all contractual responsibilities rest solely with one firm or legal entity.

M. Other Costs

Except as provided herein, fees and other costs and expenses of preparation and development of the proposal are solely that of the operator. The City has no financial responsibility with respect to such costs. All submitted material becomes the property of the City of Alameda.

N. Insurance

The successful vendor shall provide and maintain insurance at its sole cost for the term of the Contract with the following coverage:

Commercial General Liability and Auto Liability (\$1,000,000); Professional Liability (\$1,000,000); and Workers' compensation insurance in accordance with state law.

O. Indemnification

The successful operator shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, regardless of the merits or outcome of any such claim or suit arising from or in any manner connected to Operator's negligent performance of services or work conducted or performed pursuant to this Agreement.

The successful operator shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable

attorney's fees, accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies arising from or in any manner connected to the Operator's negligent performance of services or work conducted or performed pursuant to this Agreement.



## APPENDIX A

### ANTICIPATED CONTRACT/LEASE TERMS, CONDITIONS AND ISSUES

1. Concessionaire to provide tenant improvements, furniture, furnishings, and betterments as necessary to implement proposal at own expense. Improvements are subject to the approval of the City.
2. Be open for business every day of the year, and in full operation during hours designated by the City of Alameda.
3. Concessionaire to pay rent to the City as specified in the agreement.
4. Concessionaire to maintain all food and beverage facilities and equipment. Also, concessionaire shall be responsible for custodial services as specified in the agreement, including such items as flue cleaning.
5. Concessionaire must possess or be able to secure appropriate California Alcoholic Beverage license.
6. Concessionaire required to obtain all applicable operating licenses and permits.
7. Concessionaire to pay all utilities as specified in the agreement, including telephone, cable television, alarm service, electric and gas, water, sewer, refuse, etc.
8. Concessionaire to provide a continuing performance bond in an amount to be determined at the time a contract is negotiated, payable to the City of Alameda and conditioned upon faithful performance of the agreement by the concessionaire, including final inspection of the facility by the City at the end of the term of the agreement.
9. Concessionaire to maintain insurance acceptable to the City as specified in the agreement.
10. Concessionaire may propose additional services related to the food and beverage concession, such as large screen television(s) and barbecue services. Limited catering services are desired and should be included in the proposal.
11. May propose entry sign for Clubhouse Memorial Road, subject to approval by the City.
12. This is an interim operator contract. (The City may consider building a new clubhouse/banquet facility in the next 3 - 5 years.)

APPENDIX "A" (Continued)

13. Operator shall have exclusive right to serve all food and beverage at Golf Complex including the operation of a golf tournament hospitality cart.
14. City will provide prior financial data upon request.
15. Concessionaire must use automated alcoholic pouring system in bar service.
16. Specify operator's accounting firm and accounting principals used.

August 23, 2005

Dear Prospective Operator:

The City of Alameda is pleased to announce that it is inviting prospective restaurant concessionaires to submit qualifications and proposals for the operation of food and beverage services at the Chuck Corica Golf Complex.

It is the intent of the City to select the most qualified operator and enter into negotiations for the management of the bar and restaurant as well as other services to provide related food and beverage services.

A sealed original proposal and four copies must be submitted to the office of the Golf Operations Manager, at the Chuck Corica Golf Complex, 1 Clubhouse Memorial Road, Alameda, and California 94502, by Friday, October 7, 2005, 10:00 a.m. Proposals must be clearly identified as the "Restaurant Services Concession For The Chuck Corica Golf Complex."

Questions regarding this request for qualifications/proposals should be directed to Golf Operations Manager at (510) 747-7820.

Very truly yours,

Dana Banke  
General Manager  
Chuck Corica Golf Complex

Enclosure

**CITY OF ALAMEDA RESOLUTION**  
**COMMENDING ALAMEDA FREE LIBRARY**  
**LIBRARY DIRECTOR SUSAN H. HARDIE**

**FOR HER CONTRIBUTIONS TO THE CITY OF ALAMEDA**

THE COUNCIL OF THE CITY OF ALAMEDA records its appreciation for the years of service faithfully rendered by LIBRARY DIRECTOR SUSAN H. HARDIE for the City of Alameda; and

WHEREAS, SUSAN H. HARDIE'S career with the Alameda Free Library spanned from May 3, 1999 to October 3, 2005, as Library Director; and

WHEREAS, SUSAN H. HARDIE has made significant contributions to the City of Alameda, among those being:

- Provided outstanding leadership and direction to the members of the Alameda Free Library
- Under her direction, the Alameda Free Library continues its reputation as "Alameda's premier information source"
- Worked cooperatively with the business community, residents, various civic groups, and library support groups on the successful passage of Measure O with a 78% yes vote
- Navigated the complex Proposition 14 State Library Grant Application to a successful award of \$15.5 million for the construction of the new Main Library
- Provided the vision to bring the Alameda Free Library's technology into the 22<sup>nd</sup> Century
- Encouraged new parents to read to their children by establishing the "20 Minutes a Day" campaign to promote brain development in babies
- Has been a integral member of the executive team of the City of Alameda; and

WHEREAS, SUSAN H. HARDIE, upon retirement, plans on spending more time with her family, in particular her two grandchildren, and taking vacations, especially bike trips; and

WHEREAS, on October 3, 2005, SUSAN H. HARDIE will officially retire from her position as Library Director of the Alameda Free Library.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Alameda does hereby congratulate SUSAN H. HARDIE for her outstanding achievement in her service to the City of Alameda and to the profession of Library and Information Technology.

\*\*\*\*\*

\_\_\_\_\_  
Mayor Beverly Johnson

\_\_\_\_\_  
Vice Mayor Marie Gilmore

\_\_\_\_\_  
Councilmember Tony Daysog



\_\_\_\_\_  
Councilmember Doug deHaan

\_\_\_\_\_  
Councilmember Frank Matarrese

**Reso 5-A**  
**9-6-05**

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

APPOINTING MARILYN EZZY ASHCRAFT AS A MEMBER OF THE  
CITY ECONOMIC DEVELOPMENT COMMISSION  
(COMMUNITY-AT-LARGE SEAT)

BE IT RESOLVED by the Council of the City of Alameda that pursuant to Section 2-14.2 of the Alameda Municipal Code and Resolution No. 12149, and upon nomination of the Mayor, MARILYN EZZY ASHCRAFT is hereby appointed to the office of Community-At-Large Member of the Economic Development Commission of the City of Alameda, commencing September 6, 2005 and expiring on August 31, 2009 and to serve until her successor is appointed and qualified.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

Approved as to Form

CITY ATTORNEY

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

REAPPOINTING ROBERT F. KELLY AS A MEMBER OF THE  
CITY ECONOMIC DEVELOPMENT COMMISSION  
(MARINE – WATERFRONT SEAT)

BE IT RESOLVED by the Council of the City of Alameda that pursuant to Section 2-14.2 of the Alameda Municipal Code and Resolution No. 12149, and upon nomination of the Mayor, ROBERT F. KELLY is hereby reappointed to the office of Marine - Waterfront Member of the Economic Development Commission of the City of Alameda, commencing September 6, 2005 and expiring on August 31, 2009 and to serve until his successor is appointed and qualified.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

Approved as to Form

CITY ATTORNEY

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

REAPPOINTING ANTHONY M. SANTARE AS A MEMBER  
OF THE CITY GOLF COMMISSION

Approved as to Form

CITY ATTORNEY

BE IT RESOLVED by the Council of the City of Alameda that pursuant to Sections 2-9.2 of the Alameda Municipal Code, and upon nomination of the Mayor, ANTHONY M. SANTARE is hereby reappointed to the office of member of the Golf Commission of the City of the City of Alameda, for a term commencing October 1, 2005 and expiring on September 30, 2009 and to serve until his successor is appointed and qualified.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Lara Weisiger, Acting City Clerk  
City of Alameda

# CITY OF ALAMEDA

## Memorandum

To: Honorable Mayor and Councilmembers

From: Debra Kurita  
City Manager

Date: August 3, 2005

Re: Public hearing to consider an amendment to the Alameda Municipal Code by amending Chapter XIII (Building and Housing) by repealing Article I Section 13.4 (Alameda Electrical Code) in its entirety and adding a new Article I Section 13.4 (Alameda Electrical Code) to adopt the 2004 California Electrical Code, and approving certain amendments thereto.

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### BACKGROUND

Periodically, the State of California adopts new sets of technical building and fire regulations known as the California Building Standards Code. Effective July 1, 2005 the State of California has adopted the 2004 edition of the California Electrical Code. Local jurisdictions may establish more restrictive building standards reasonably necessary because of local climatic, geological or topographical conditions.

On April 1, 2003, The City Council of Alameda adopted the 2001 edition of the Uniform Administrative Code, California Building Code, California Plumbing Code, California Mechanical Code, California Electrical Code, California Fire Code, Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings and the Uniform Code for Building Conservation.

### DISCUSSION

The State of California has adopted the 2004 California Electrical Code. The California Electrical Code is based on the 2002 National Electrical Code. This code became effective throughout California on July 1, 2005. By locally adopting this code the City clearly establishes legal authority for enforcement of this code and enables the City to adopt various administrative amendments and all technical amendments necessary due to local climactic, geological or topographical conditions.

It is proposed to adopt local code amendments, including,

- Prohibition of metallic pipe, conduit or duct under concrete floor slabs,
- Various AP&T requirements for service equipment and meters.

*Dedicated to Excellence, Committed to Service*

**Re: Public Hearing and  
Intro of Ordinance 5-C  
9-6-05**



BUDGET CONSIDERATION/FINANCIAL IMPACT

Adoption of the 2004 California Electrical Code required the purchase of new 2004 California Electrical Code books and will require that inspection staff be trained on the new code. The new codebooks cost approximately \$1,500 and were budgeted and purchased in the 2004/2005 FY. Staff training will cost approximately \$2,500 and is currently budgeted in the 2005/2006 FY. Permit fees cover funding for both the codebooks and the code training.

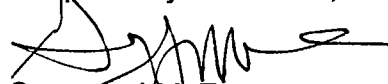
MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

All other sections of the Municipal Code dealing with this subject matter have been thoroughly analyzed and found to be compatible with the proposed amendment to the Municipal Code.

RECOMMENDATION

The City Manager recommends that the City Council introduce the subject ordinance amending the Alameda Municipal Code by amending Chapter XIII (Building and Housing) by repealing Article I Section 13.4 (Alameda Electrical Code) in its entirety and adding a new Article I Section 13.4 (Alameda Electrical Code) to adopt the 2004 California Electrical Code, and approving certain amendments thereto.

Respectfully submitted,



Gregory J. McFann  
Acting Planning and Building Director

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_  
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY  
AMENDING CHAPTER XIII (BUILDING AND HOUSING) BY  
REPEALING ARTICLE I SECTION 13.4 (ALAMEDA  
ELECTRICAL CODE) IN ITS ENTIRETY AND ADDING A NEW  
ARTICLE I SECTION 13.4 (ALAMEDA ELECTRICAL CODE) TO  
ADOPT THE 2004 EDITION OF THE CALIFORNIA  
ELECTRICAL CODE, AND APPROVING CERTAIN  
AMENDMENTS THERETO.

BE IT ORDAINED by the City Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is amended by repealing Article I  
Section 13.4 of Chapter XIII in its entirety.

Section 2. The Alameda Municipal Code is amended by adding a new Article I  
Section 13.4 to Chapter XIII of the Alameda Municipal Code which shall read as follows:

**ARTICLE I. UNIFORM CODES RELATING TO BUILDING, HOUSING AND  
TECHNICAL CODES**

**13.4 ALAMEDA ELECTRICAL CODE**

**13-4.1 Adoption of California Electrical Code.**

Except as hereinafter provided, the California Electrical Code, 2004 Edition, published by the  
National Fire Protection Association is adopted by reference and made a part hereof as if fully set  
forth herein at length, and shall be know as the Alameda Electrical Code. (Ord. No. 2788 N.S. § 2)

**13-4.2 Modifications, Amendments and Deletions to the California Electrical  
Code.**

a. Article 230-8, Raceway Seal, of the California Electrical Code, 2001 Edition, is  
amended by adding the following:

Raceways or ducts within the underground box shall also be sealed.

b. Article 230-26, Point of Attachment, of the California Electrical Code, 2004 Edition, is  
amended to read as follows:

Unless special permission is granted in advance to do otherwise, the location of the point of  
service drop support or attachment on a building shall be at that portion of the building

Approved as to Form

CITY ATTORNEY

facing and nearest to the street, alley, easement, or public way on which is located the utility's pole having facilities for rendering service of the type required to fit the needs of the particular installation involved.

The point of attachment shall be the portion of the service conduit adjacent to the service head. The service conduit shall be securely fastened to structure served and space provided for attachment of a service drop strain clamp by the serving utility.

The outer or upper end of the overhead service conduit shall not overhang or project horizontally more than eighteen inches (18") beyond the last point at which the conduit is supported and fastened.

In cases where it is necessary to obtain the required height for support of the service drops by extending the service conduit above the roof of the building, only rigid metallic and intermediate metal conduit shall be used for this purpose and shall not be smaller than one and one-quarter inches (1 1/4") trade size, not to extend more than thirty inches (30") beyond the last support for periscope service without brace. If nonferrous metal conduit is used, it shall not be smaller than two inches (2").

c. Article 230-30, Insulation, of the California Electrical Code, 2004 Edition, is amended by deleting the exceptions and adding the following:

Service entrance conductors entering buildings or other structures shall be insulated. Conductors installed in underground raceways shall have XHHW, THW or other suitable insulation as listed in 75 °C column of Table 310-16 of the National Electrical Code.

d. Article 230-8, Insulation of Service Entrance Conductors, of the California Electrical Code, 2004 Edition, is amended by adding the following:

Ends of service conductors in underground boxes shall be sealed to prevent entrance of moisture.

e. Article 230-43, Wiring Methods for 600 Volts, Nominal, or Less, of the California Electrical Code, 2004 Edition, is amended by deleting items 1, 2, 5, 6, 7, 12, 13, 14, 15 & 16 and by adding the following:

Except when installed as busways or cablebus, all service entrance conductors in or on buildings shall be installed in rigid metal conduit or intermediate metal conduit  
Service entrance conduits installed to supply single and duplex family units shall not be smaller than one and one-quarter inch (1 1/4") trade size.

f. Article 230-49, Protection Against Physical Damage - Underground, of the California Electrical Code, 2004 Edition, is amended by adding the following:

Underground service entrance conductors shall be installed in rigid metal conduit or rigid non-metallic conduit sized not smaller than two inches (2"). On utility poles conduit risers shall be rigid non-metallic up to a height above grade of eight feet (8').

g. Article 230-54, Connections at Service Head, of the California Electrical Code, 2004 Edition, is amended by adding the following:

The service head shall be located on that portion of the building served which is facing the serving line. The service head shall be located at that height which will allow for the proper clearance of the service drop over street, curb, and sidewalk. This will require that the service head for residential occupancies be not less than twelve feet, six inches (12'6") above the driveway where the drops may cross a private driveway, and not less than ten feet, six inches (10'6") above the ground where persons may walk, other than a public walk, which requires a clearance of sixteen feet (16') above the curb.

If the height of the building involved is such that these clearance heights cannot be maintained, then a periscope-type service or some other auxiliary structure shall be resorted to. In the event that a periscope-type service is used, it may be placed on the side of the building served not more than eighteen inches (18") back of the wall which is facing the serving line.

h. Article 230-70, General, (a) Location, of the California Electrical Code, 2004 Edition, is amended to read as follows:

The service disconnecting means shall be located at a readily accessible point nearest to the entrance of the service conductors, and in residential property shall be accessible from the exterior, except where a meter room is provided. Such service disconnecting means shall not be installed under show windows, or in the cases of multiple occupancies, in any location not readily accessible to all parties concerned. Service disconnecting means shall not be installed in bathrooms.

i. Article 230-71, Maximum Number of Disconnects, of the California Electrical Code, 2004 Edition, is amended to read as follows:

A separate service disconnecting means shall be provided for each separately metered subdivision of the service conductors. Switches or circuit breakers accessible from the exterior of the building shall be limited to one for each meter; in new construction however, exceptions will be granted in cases involving provisions for the installation of major household appliances, provided that the over current devices are contained within a single panel board assembly approved for the purpose, in which case the number of circuits shall be limited to six (6). More than six (6) disconnects will require a main disconnect. The service disconnecting means shall have provisions for locking each subservice disconnect in the "Off" position with a utility-type seal.

j. Article 240-24, Location in or on Premises, (b) Occupant to Have Ready Access, of the

California Electrical Code, 2004 Edition, is amended by adding the following:

In new installations, not more than two feeder or branch-circuit over current devices shall be installed on the load side of any meter in any meter cabinet opening to the exterior of a building. For a larger number of over current devices, a distribution center shall be provided at a suitable location within the building. Exceptions to this rule will be granted in cases involving provision for the installation of major household appliances, provided that the over current devices are contained within a single panel board assembly approved for the purpose.

In apartment houses and other buildings of multiple occupancy, branch circuit over current devices which are located in an apartment or portion of the building intended to be separately occupied by a tenant will not be considered as being readily accessible if they protect circuits supplying any outlets or equipment not for this exclusive use of this tenant.

The over current device may be located in a commonly accessible location, but all circuits supplying individual apartments in multifamily dwellings shall be confined to each individual apartment served.

k. Article 250-50, Grounding Electrode System, of the California Electrical Code, 2004 Edition, is amended by adding the following:

The concrete encased electrode described in 250-52 A (3) shall be installed during the construction of all new buildings as the primary ground and when new foundations are constructed for existing buildings. A ground rod electrode shall be installed at the service entrance location at time of alteration or installation of service to existing buildings as a primary grounding means.

l. Article 250-104 B, Bonding of Piping Systems, of the California Electrical Code, 2004 Edition, is amended by adding the following:

General. Interior and exterior hot and cold water system shall be bonded to the neutral buss and the interior gas piping. Such connection shall not be located in under-the-floor crawl spaces, except by permission of the Building Official.

m. Article 300-3, Conductors, (c) Conductors of Different Systems, of the California Electrical Code, 2004 Edition, is amended by adding the following:

Conductors Supplied by Individual Disconnecting Means in Two or More Occupancy Buildings. Conductors or circuits derived from a sub-service disconnecting means for an occupancy shall not occupy the same wiring enclosure, cable, or raceway with conductors for other occupancies.

Exception 1. Emergency circuit wiring

Exception 2. Group-mounted service boards in single enclosures and auxiliary gutters at service switchboard location.

n. Article 334.10, Uses Permitted, of the California Electrical Code, 2004 Edition, is amended by adding the following:

Nonmetallic-sheathed cable may be used in the hollow spaces of walls and ceilings of wood frame construction and must be concealed by the permanent finish of the building. It is limited to use on circuits not exceeding 300 volts between conductors or 150 volts to ground.

o. Article 334-15(c), In Unfinished Basements, of the California Electrical Code, 2004 Edition, is amended by adding the following:

In wood frame construction where cable is not exposed to physical damage, the cable shall either be run through bored holes in joists, parallel to joist, or on girders or running boards and shall closely follow the vertical surface of such members.

Where cable is exposed to physical damage, a metal-clad system of wiring shall be used in the unfinished area of the building.

p. Article 338.10, Uses Permitted as Service-Entrance Conductors, of the California Electrical Code, 2004 Edition, is deleted.

q. Article 358.16, Use, of the California Electrical Code, 2004 Edition, is amended by adding the following:

Electrical metallic tubing shall not be used in the ground floor slab or in any location where it would be in contact with the ground.

n. Article 394 of the California Electrical Code, 2004 Edition, is deleted. (Ord. No. 2898 N.S. § 2)

#### **13-4.3 Findings.**

Subdivisions (a) through (r) of Section 13-4.2 are based upon the following findings:

Pursuant to Sections 17958.5 and 17958.7 of the California Health and Safety Code, the City Council finds that the modifications of the California Electric Code, 2004 Edition, contained in subdivisions (a) through (r) of Section 13-4.2, are reasonably necessary because of certain local climatic, geographical and topographical conditions existing in the City of Alameda which are more specifically described as follows:

a. The City of Alameda is an island community with access dependent upon bridges and underwater tubes and, in the event of a disaster, could be completely isolated from outside assistance.

b. The City of Alameda is adjacent to several earthquake faults, which make buildings and structures susceptible to structural ruptures and fires.

c. The entire municipal water supply for the City of Alameda is transported via three aqueducts, which are vulnerable to earthquake and tidal flooding.

- d. Alameda is a low-lying island community with soil and groundwater conditions, which are corrosive to metals.
- e. Alameda has very fine, sandy soil conditions.
- f. The City of Alameda lies in the path of two (2) airport landing and takeoff zones.
- g. Electrical power in the City of Alameda is provided by Alameda Power and Telecom, a City owned and operated municipal utility, which has the authority to regulate acceptable materials, arrangement, location and type of service equipment. (Ord. No. 2898 N.S. § 2)

**13-4.4 Copy of California Electrical Code with Planning and Building Department.**

A copy of the California Electrical Code, 2004 Edition, has been deposited in the Office of the Planning and Building Department of the City and shall be maintained by the Building Official for use and examination by the public. (Ord. No. 2898 N.S. § 2)

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 6. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance hereby adopted, to the extent of such conflict only, are hereby repealed.

Section 7. The City Clerk of the City of Alameda is hereby directed to cause this ordinance to be published in the Official Newspaper of the City of Alameda

Section 8. This ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect 30 days after the date of its final passage and adoption.

\_\_\_\_\_  
Presiding Officer of the Council

Attest:

\_\_\_\_\_  
Lara Weisiger, City Clerk

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2005.

---

Lara Weisiger, City Clerk  
City of Alameda



City of Alameda  
Memorandum

Date: August 29, 2005

To: Honorable Mayor and  
Council Members

From: Debra Kurita  
City Manager

Re: Appeal of Historical Advisory Board decision to uphold the imposed penalties for unauthorized demolition at 616 Pacific Avenue. The property is within the R-4, Neighborhood Residential District. Applicant/Appellant: Erwin Roxas

**BACKGROUND**

In 2002, the Historical Advisory Board (HAB) initiated a process to revise the sections of the Alameda Municipal Code related to the preservation of historical and cultural resources. The purpose of this process was to expand the purview of the HAB review of proposed substantial demolitions of historic buildings to include all structures constructed prior to 1942, as well as to establish penalty provisions for the unauthorized demolition of buildings identified as historically significant. As a result of this revision process, which included reviewing ordinances from other municipalities, conducting several work-study sessions, and holding a number of public hearings, the HAB developed language that was adopted by the City Council on April 2, 2003. The penalty provision of this language, which is provided in its entirety in the Municipal Code Section of this report, restricts the remedy for the removal of 30 percent or more of the value of a structure listed on the Historic Building Study List without prior review and approval by the HAB to the imposition of a five-year stay in the issuance of any construction-related permits.

On July 12, 2004, the appellant received Major Design Review approval for first and second story additions to the single-family residence at 616 Pacific Avenue. The Building Official reviewed the plans and determined that the demolition activity associated with the construction project constituted less than 30 percent of the value of the residence. Therefore, although the structure had been identified on the Historic Building Study List, consideration of the approval by the HAB was not warranted. As a result, the building permits for this project were issued on January 10, 2005. However, on May 5, 2005, during the investigation of a complaint, City staff found that the contractor had exceeded the scope of work approved on the plans and the structure had been completely demolished. In conformance with the penalty provisions of the Municipal Code, City staff issued a five-year stay to the property owner for failure to secure approval prior to demolition of a historically significant structure. The property owner appealed this action to the Historical Advisory Board.

**Re: Public Hearing and  
Resolution 5-D**

**9-6-05**

On August 4, 2005, the HAB held a public hearing on the appeal to determine if the property at 616 Pacific Avenue should be subject to the five-year stay on construction. Although staff recommended granting the appeal based on extenuating circumstances, the HAB elected to uphold the imposition of the penalty.

## DISCUSSION

There are a number of extenuating circumstances regarding the demolition of the structure at 616 Pacific Avenue that resulted in the staff recommendation to the Historical Advisory Board that the appeal of the imposition of the five-year stay be upheld. The report prepared for the HAB meeting (See Attachment 1) analyzes the following five main points supporting the recommended waiver:

1. Applicant believed he had obtained all necessary permits  
The applicant, an owner-builder, felt a discussion he had with staff permitted him to dismantle the residence; his interpretation of the directions received may have prevented a full understanding of the conversation.
2. Historic Designation  
The historic designation assigned to the structure at 616 Pacific was level "H." Of the five assigned levels of historic resources listed in the Historic Building Study List, this designation is the lowest; it encourages further evaluation of the resource to determine its actual significance. Although constructed in 1905, significant alterations to the façade occurred in 1932 when the side porch access and concrete steps may have been added. Further, in 1958, the structure was re-sided with asbestos shingles. Staff conducted research on the property and did not uncover any additional information regarding this building that would indicate historical importance.
3. Similar project was granted Certificate of Approval  
Another property in similar condition and built in 1900 was granted a Certificate of Approval by the Historical Advisory Board in July 2005.
4. Structure suffered from extensive wood rot  
After the fact, the property owner submitted a letter from a licensed structural engineer stating that the structure suffered from the extensive wood rot.
5. Imposing five year no-build penalty would be detrimental to this neighborhood  
The penalty provision in the code does not provide for any other remedy other than the five-year stay; there is no flexibility to impose a fine or grant a lesser stay in development. Neighbors of this property oppose the five-year stay, as they believe that leaving the property vacant will create a blight to the neighborhood. Letters in support of the reconstruction and testimony were presented at the Historical Advisory Board meeting by neighbors.

### BUDGET CONSIDERATION/FINANCIAL IMPACT

There will be no additional funding in the Planning & Building Department budget necessary related to planning activities for this project.

### MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This appeal refers to the Alameda Municipal Code §13-21.10b: Penalties., which states:

“The removal or demolition of any contributing structure in a district designated a Historical Monument or main building, or other designated structure, such as water towers, coach houses or landscaping, listed on the Historical Building Study List without prior approval of a certificate of approval shall result in a five (5) year stay in the issuance of any building permit or construction-related permit for any new construction at the site previously occupied by the historic resource. For the purposes of this section, the date of demolition shall be the date the City first was advised of the removal or demolition, unless the property owner can demonstrate an earlier date. The removal or demolition shall be presumed to have occurred on the date the City has actual knowledge of the removal or demolition, and the owner shall have the burden of proving an earlier date, if entitlement to an earlier date is claimed. The owner shall have the affirmative obligations to submit a landscape plan or other site maintenance plan to the satisfaction of the Planning and Building Director and to maintain such landscaping or implement the maintenance plan and to prevent the accumulation of debris and waste on the property during this period. The site shall not be used as a private or commercial parking lot.”

### ENVIRONMENTAL REVIEW

This action is Categorically Exempt from State CEQA Guidelines, Section 15321 – Enforcement Actions by Regulatory Agencies.

### RECOMMENDATIONS

1. Adopt a resolution granting the appeal by determining that the five-year stay in the issuance of any building or construction related permits will not be imposed for the single family dwelling at 616 Pacific Avenue.
2. Direct the City Manager to review provisions of Section 13-21 of the Municipal Code related to the demolition of historic structures and develop, with input from the community and the Historical Advisory Board, recommended amendments and penalty options.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory J. McFann', written over a horizontal line.

Gregory J. McFann  
Acting Planning & Building Director

**ATTACHMENTS:**

1. Staff Report: August 4, 2005 HAB Meeting
2. August 4, 2005 Draft Minutes (HAB)

cc: Historical Advisory Board Members

**CITY OF ALAMEDA  
PLANNING AND BUILDING DEPARTMENT**

**STAFF REPORT**

**ITEM NO.:** **5**

**APPLICATION:** Consideration of penalties for unauthorized demolition at 616 Pacific Avenue. The property is within the R-4, Neighborhood Residential District.

**GENERAL PLAN:** Medium Density Residential

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt from State CEQA Guidelines, Section 15321 – Enforcement Actions by Regulatory Agencies

**STAFF PLANNER:** Emily Pudell, Planner II

**RECOMMENDATION:** Waive the five (5) year stay in development, and allow for the single-family home, approved by Major Design Review (DR04-0051) to be constructed.

**ACRONYMS:** AMC – Alameda Municipal Code  
DR – Major Design Review

**ATTACHMENTS:**

1. Draft Resolution
2. Notice of Preliminary Major Design Review Approval (DR04-0051)\ Project Plans
3. Notice of Violation (Code Compliance Division)
4. Letter of Appeal, dated May 12, 2005
5. Building Permit
6. Letter from Structural Engineer
7. Letters from Neighbors
8. Photos

---

**I. PROJECT BACKGROUND**

On May 24, 2004, an application for Major Design Review (DR) was received by the Planning and Building Department for the proposed 1<sup>st</sup> and 2<sup>nd</sup> story additions, enlargement of the detached garage, interior remodel, porch additions, etc. that would add approximately 1,562

square feet to the dwelling and 225 square feet to the garage and storage shed located at 616 Pacific Avenue.

The description of work, in the Major Design Review application, clearly states that the scope of work would affect a significant portion of the existing structure. Although the demolition of the structure is not specifically called out in the project description, two of the four exterior walls and the dwelling's roof would need to be removed to allow for the proposed expansion of the building. Additionally, the project involved remodeling a significant portion of the existing building's interior spaces. (See Attachment #1: Notice of Preliminary Major Design Review Approval (DR04-0051)\ Project Plans)



Photo #2 – Recent Photo

The DR plans were approved by staff, with conditions, on July 12, 2004 and building permits were issued on January 10, 2005. Although the Major Design Review application and Building Permit do not identify demolition within their scope, the Appellant believed all necessary permits were secured to do the work performed.

On May 3, 2005, an inquiry was received by the City of Alameda's Code Compliance Division regarding the demolition of the house. Field inspections were conducted by the Code Compliance Division and Planning Division Staff, which determined that the dwelling had been demolished. Due to the fact that all structures, constructed on or before 1942, are under demolition control, the Code Compliance Division responded on May 5, 2005 informing the property owner that a five (5) year stay in the issuance of any building or construction related permits would be issued (See Attachment #2) (§13-21.10b.: Penalties. "The removal or demolition of any...main building, or other designated structure...listed on the Historical Building Study List without prior approval of a Certificate of Approval shall result in a five year stay in the issuance of any building permit or construction-related permit for any new construction at the site previously occupied by the historic resource."). A letter of appeal was submitted by the project applicant on May 12, 2005. (See Attachment #3)

## II. STAFF ANALYSIS

### 1. Applicant believed he had obtained all necessary permits.

In the case of 616 Pacific Avenue, miscommunications occurred between the applicants and Staff. The Design Review approval did not specify a requirement for a demolition permit and the applicant relied upon this approval and the issuance of a building permit as authorization to "deconstruct the house". The letters received from the applicant, structural engineer, and letters from neighbors assumed that Staff approved the dismantling of the building. As a result, the dwelling located at 616 Pacific was

demolished without first obtaining the proper approvals. Staff believes that applying the five (5) year stay in development for this case is, therefore, inappropriate.

2. Historic Designation

According to available resources, the building that was located at 616 Pacific Avenue was a single-family dwelling, constructed in 1905 (Alameda County Assessor's records). City records also show that very few building permits have been issued for the single-family dwelling since the building was first constructed. (See Attachment #4)

When a project is submitted for review, Staff guide to the Architectural and Historical Resources of the City of Alameda. According to this document, the subject property is listed with an (H) designation, which means that it, "*may* have Historical importance because of its *apparent* age or location, or...*similarity* to other buildings done by important architects and/or builders," however, "*research should precede further evaluation of this resource.*" No additional information has become available regarding this building since it was originally listed.



Photo #1 – 1978 Survey

3. Similar project was granted Certificate of Approval

On June 6, 2005, the HAB considered the demolition of 826 Lincoln Avenue. Although the Lincoln property is not listed on the Building Study List, the two buildings (826 Lincoln Avenue and 616 Pacific Avenue) were very similar architecturally. According to information provided on the Lincoln property, this building appeared to be in a similar state of disrepair. At that meeting, the Historic Advisory Board found that the building at 826 Lincoln Avenue was not historically significant and approved the Certificate of Approval for its demolition.

4. Structure suffered from extensive wood rot

Information provided, to the Planning and Building Department, by the structural engineer for the project indicated the exterior walls had extensive dry rot damage and presented a danger of collapse to the workers involved with the remodel. He further stated that there was no other viable alternative than to remove the damaged wood and replace it during reconstruction. (See Attachment #5) This is also substantiated by the neighbor (owner of 610 Pacific Avenue) and his knowledge of the contractor's construction practices.

5. Imposing 5-year no-build penalty would be detrimental to this neighborhood

The neighbors at 610 and 620 Pacific Avenue have expressed their support of the applicant and his wish to rebuild the dwelling, as approved by Major Design Review

DR04-0051. (See Attachment #6) As indicated in their letters, they believe that upholding the five year stay and preventing the reconstruction of the dwelling would not only create an eye-sore so close to the Webster Street Community Commercial District, but also leave an empty lot among other developed properties which would have a negative impact on the adjacent properties and surrounding neighborhood.

## **II. ENVIRONMENTAL REVIEW**

The project qualifies for a Class 21 Categorical Exemption from CEQA Guidelines under Section 15321 – Enforcement Actions by Regulatory Agencies, which exempts the adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

## **III. RECOMMENDATION**

The Planning and Building Department recommends that the Historical Advisory Board hold a public hearing, consider all pertinent testimony and information, and then determine that the five (5) year stay in the issuance of building or construction related permits for the property at 616 Pacific Avenue should be set aside.

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**CITY OF ALAMEDA  
HISTORICAL ADVISORY BOARD  
RESOLUTION NO. *Draft***

**A RESOLUTION OF THE HISTORICAL ADVISORY BOARD OF THE CITY OF  
ALAMEDA WAIVING THE FIVE (5) YEAR STAY IN DEVELOPMENT FOR THE  
PROPERTY LOCATED AT 616 PACIFIC AVENUE.**

WHEREAS, on July 12, 2004 Planning and Building Department Staff approved Major Design Review DR04-0051 for the proposed 1<sup>st</sup> and 2<sup>nd</sup> story additions, enlargement of the detached garage, interior remodel, porch additions, etc. that would add approximately 1,562 square feet to the dwelling and 225 square feet to the garage and storage shed; and

WHEREAS, on January 10, 2005 Planning and Building Department Staff issued building permits for the approved modifications, mentioned above; and

WHEREAS, an inquiry was received by the Code Compliance Division on May 2, 2005 regarding the demolition of the main dwelling at 616 Pacific Avenue; and

WHEREAS, on May 5, 2005, a Stop Work Order and notice of a five (5) year stay in development was placed on the subject property, pursuant to the Alameda Municipal Code (AMC) §13-21b.; and

WHEREAS, the property owner filed an appeal of the five (5) year stay with the Planning and Building Department on May 12, 2005; and

WHEREAS, a letter was submitted on June 28, 2005 from a structural engineer indicating that the main building had extensive dry rot damage; and

WHEREAS, City records show that very few building permits have been issued for the single-family dwelling since it was first constructed, indicating that the property may not have been properly maintained; and

WHEREAS, letters of support have been received from neighboring property owners stating that they encourage the redevelopment of the property, as originally proposed; and

WHEREAS, if the Site remained vacant on a street that is otherwise substantially developed, the property would likely have a negative impact on the adjacent properties and the surrounding neighborhood; and

WHEREAS, the subject property is designated as Medium Density Residential on the General Plan Diagram; and

WHEREAS, the subject property is located in the R-4, Neighborhood Residential Zoning District; and

NOW, THEREFORE BE IT RESOLVED that the Historic Advisory Board finds that the project is Categorically Exempt under California Environmental Quality Act Guidelines, Section 15321 – Enforcement Actions by Regulatory Agencies;

NOW, BE IT FURTHER RESOLVED that the Historic Advisory Board finds that the demolition of the house at 616 Pacific Avenue; Alameda, CA is not subject to the five (5) year stay in development according to Alameda Municipal Code (AMC) §13-21b. and that construction of the single-family dwelling, approved by Major Design Review #DR04-0051, should be constructed, subject to the following conditions:

1. **APPROVED PLANS.** The construction of the single-family dwelling shall be completed in substantial compliance with the plans dated May 24, 2004, prepared by Design Planning Associates, Inc., marked as "Exhibit A", on file in the City of Alameda Planning and Building Department.
2. **CONDITIONS OF APPROVAL: DR04-0051.** The construction of the single-family dwelling shall comply with all conditions of approval identified in the Notice of Preliminary Major Design Review Approval, dated July 12, 2004.

**HOLD HARMLESS.** The City of Alameda requires as a condition of this approval that the applicant, or its successors in interest, defend, indemnify, and hold harmless the City of Alameda or its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, and employees to attack, set aside, void, or annul, an approval of the City concerning the subject property. The City of Alameda shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding, or the City fails to cooperate in the defense, the applicant shall not hereafter be responsible to defend, indemnify, or hold harmless the City.

**ACKNOWLEDGMENT OF CONDITIONS.** The applicant shall acknowledge in writing all of the conditions of approval and must accept this permit subject to those conditions and with full awareness of the applicable provisions of Chapter 30 of the Alameda Municipal Code in order for this approval to be exercised.

The decision of the Historical Advisory Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision.

\* \* \* \* \*



## City of Alameda • California

### NOTICE OF PRELIMINARY MAJOR DESIGN REVIEW APPROVAL

**Note: This is not a Building Permit.**

This is for approval of **Design Review Only**. Please check with the Central Permit Office at (747-6800) to see if the Building Permit is ready to issue.

Erwin Roxas  
616 Pacific Avenue  
Alameda, CA 94501

Project Number: DR04-0051  
Project Address: 616 Pacific Avenue

**Project Description:** The proposal involves a second story addition of approximately 430 square feet. The addition will measure approximately 23-feet from grade to the highest point of the gable roof and will be setback from the property lines by approximately thirty six feet (36') from the north, six feet six inches (6'6") from the east, thirty three feet (33') from the south, and three feet eight inches (3'8") from the west. Also proposed is a second story balcony, first floor deck, and expansion of an existing three (3) car garage. The second story balcony will measure approximately 15-feet from grade and will be approximately 208 square feet in size, and the deck will measure approximately 3.5-feet from grade and will be approximately 794 square feet in size. The proposed garage will measure approximately 24' by 30', an expansion of approximately 7.5-feet in depth. The new garage will accommodate three (3) standard-size parking spaces (8.5' wide by 18' deep) and will be built, in the same location as the existing garage, up to the side and rear property lines.

#### Conditions:

- (1) This approval is valid for one (1) year. Work must be started under valid building permit prior to July 12, 2005, unless the applicant applies for and is granted a one (1) year extension by Design Review Staff prior to expiration. Only one (1) extension may be granted.
- (2) The completed project shall be in substantial compliance with plans prepared for the 616 Pacific Avenue residence, dated May 24, 2004, consisting of six (6) sheets of plans, on file in the office of the City of Alameda Planning Department.
- (4) Window framing and construction shall be wood clad, as shown on plans marked Exhibit "A". Internal grids are not permitted. Windows shall be recessed from the surface of the exterior wall.
- (5) Final Design Review Inspection shall be required prior to Final Building Inspection.
- (6) Finals plans shall show that drainage is diverted to Pacific Avenue.
- (7) All Time and Materials charges shall be paid in full prior to issuance of a Building Permit.
- (8) All plans shall conform to Uniform Building Code standards and the Alameda City Municipal Code.
- (9) Any changes to the exterior details from the approved plans shall be submitted for Planning Staff review and approval.

#### Environmental Determination:

- (1) The proposal is Categorically Exempt from CEQA, Guidelines, Section 15301 (Existing Facilities).

#### Findings:

- (1) The project will have no significant adverse effects on persons or property in the vicinity.
- (2) The project will be compatible and harmonious with the design and use of surrounding properties.
- (3) The project will be consistent with the City's Design Review Guidelines.

Planning & Building Department  
2263 Santa Clara Avenue, Room 190  
Alameda, California 94501-4477  
510.747.6850 • Fax 510.747.6853 • TDD 510.522.7538

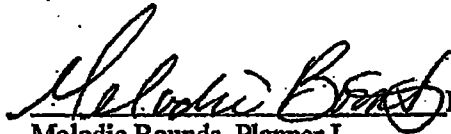
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**Note:** This Notice of Decision is required under Zoning Ordinance Section 30-36.3. To appeal this decision, a written appeal must be filed with the required appeal fee in accordance with Section 30-36.4 within ten (10) days of approval.

Approved: Greg Fuz, Director of Planning and Building

Per:

  
Melodie Bounds, Planner I

Date: July 12, 2004

# BUILDING CODES - CODE DATA

ALL CODES REFERENCED SHALL CONFORM TO THE FOLLOWING CODES AND REGULATIONS AS APPLICABLE:

- CALIFORNIA BUILDING CODE - 2001 EDITION (1997 LSC)
- CALIFORNIA MECHANICAL CODE - 2001 EDITION (2000 LSC)
- CALIFORNIA ELECTRICAL CODE - 2001 EDITION (2000 LSC)
- CALIFORNIA PLUMBING CODE - 2001 EDITION (1999 LSC)

## PROJECT DIRECTORY

ARCHITECT: JAMES A. JONES, INC.  
1001 PUEBLO BLVD., SUITE 100  
OAKLAND, CA 94612  
TEL: (415) 763-8000 FAX: (415) 763-8001

STRUCTURAL: JAMES A. JONES, INC.  
1001 PUEBLO BLVD., SUITE 100  
OAKLAND, CA 94612  
TEL: (415) 763-8000 FAX: (415) 763-8001

MECHANICAL: JAMES A. JONES, INC.  
1001 PUEBLO BLVD., SUITE 100  
OAKLAND, CA 94612  
TEL: (415) 763-8000 FAX: (415) 763-8001

ELECTRICAL: JAMES A. JONES, INC.  
1001 PUEBLO BLVD., SUITE 100  
OAKLAND, CA 94612  
TEL: (415) 763-8000 FAX: (415) 763-8001

JOB SITE COPY

## DRAWING INDEX

- ARCHITECTURAL**
- 0 COVER SHEET, DRAWING INDEX, APPLICABLE CODES
  - 1 SITE PLAN, SEE DATA AND SECTION
  - 2 EXISTING CONDITIONS
  - 2A EXISTING PLAN AND DETAILS
  - 3 FIRST FLOOR PLAN
  - 4 SECOND FLOOR PLAN
  - 5A MECHANICAL DETAILS
  - 5 ELECTRICAL
  - 6 PLUMBING
- STRUCTURAL**
- 10A GENERAL NOTES, DIMENSIONS AND TYPICAL DETAILS
  - 10B TYPICAL FLOORING DETAILS
  - 10C ROOF JOISTING AND FLOORING PLAN
  - 10D FIRST FLOOR FRAMING PLAN
  - 10E SECOND FLOOR FRAMING PLAN
  - 10F ROOF FRAMING PLAN
  - 10G GARAGE FRAMING PLAN AND PLUMBING DETAILS
  - 10H FOUNDATION/PAVEMENT DETAILS
  - 10I FRAMING DETAILS
  - 10J PROPRIETARY ROOF MANUFACTURING DETAILS, AND NOTES
- MECHANICAL AND ENERGY**
- 10-1 TYPICAL
  - 10A GENERAL NOTES, DIMENSIONS AND TYPICAL DETAILS
  - 10B MECHANICAL-ROOF FLOOR PLAN
  - 10C PLUMBING, LUBRICATION, TIGHTENING & SCHEDULING
  - 10D PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10E PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10F PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10G PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10H PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10I PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
  - 10J PLUMBING, HOT FLOOR PLAN, WATER & GAS PIPING
- ELECTRICAL**
- 10A GENERAL NOTES, DIMENSIONS, ORIGINAL NOTES
  - 10B FIRST FLOOR PLAN
  - 10C SECOND FLOOR PLAN
  - 10D SCHEDULES
  - 10E SPECIFICATIONS

ROXAS RESIDENCE  
616 Pacific Ave.  
Oakland, Ca.

1001 PUEBLO BLVD., SUITE 100  
OAKLAND, CA 94612  
(415) 763-8000 FAX (415) 763-8001

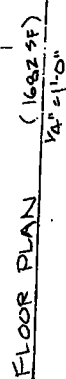
Draw-0031

CODES, SHEET INDEX AND  
GENERAL INFORMATION

0031-0078

RECEIVED  
MAY 12 2005  
REVISION 0

PERMIT CENTER  
ALAMEDA, CA 94501



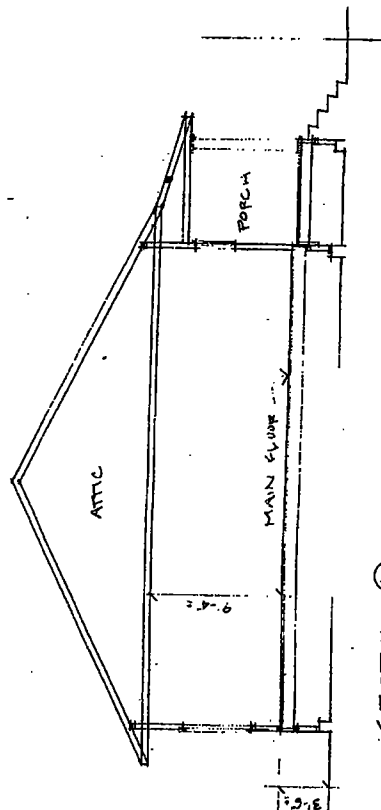
**RECEIVED**

MAY 12 2005

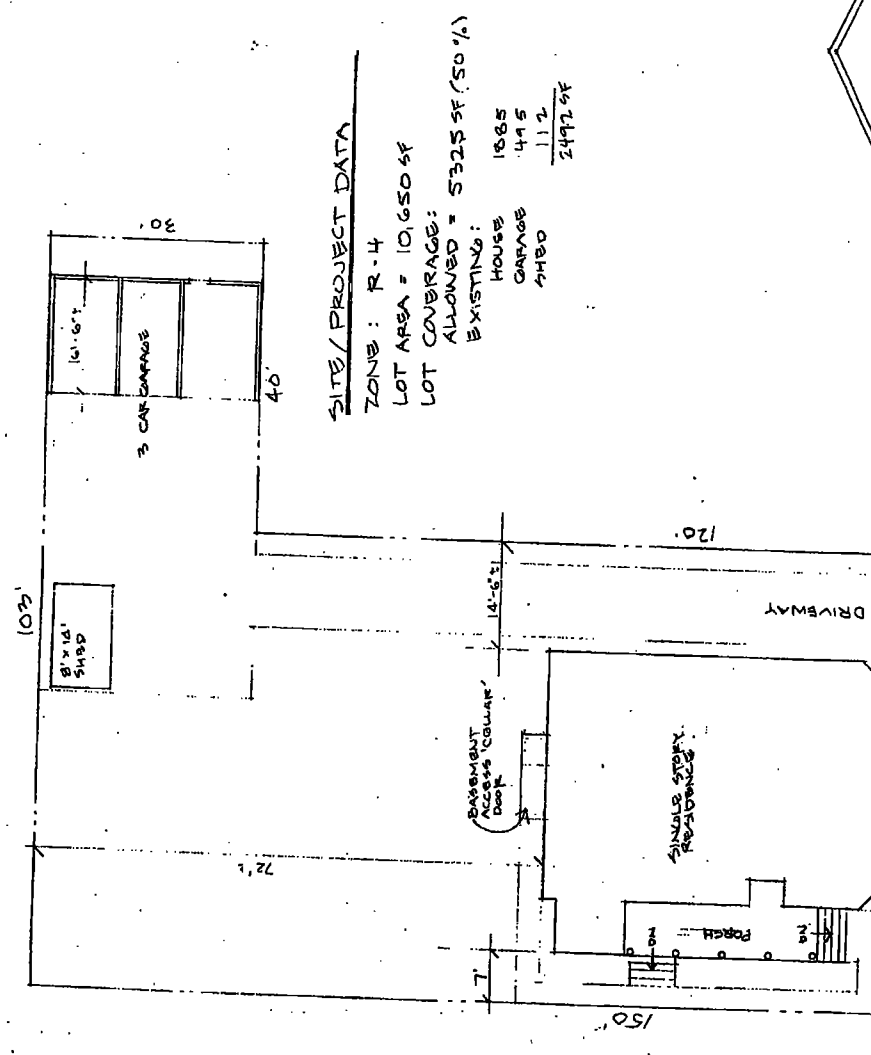
EXISTING  
PERMIT CENTER  
ALAMEDA, CA 94601  
CONDITIONS

616 PACIFIC AVENUE  
ALAMEDA, CA 94501

11-23-04 25-00001  
5.17.04  
4-26-04



SECTION (B)



SITE / PROJECT DATA

主、臣

LOT AREA = 10,650 SF

LOT COVERAGE:

ALLOWED = 5325450%

EXISTING:

**தொடர்**

## PARADOX

THE

As 7.6b7

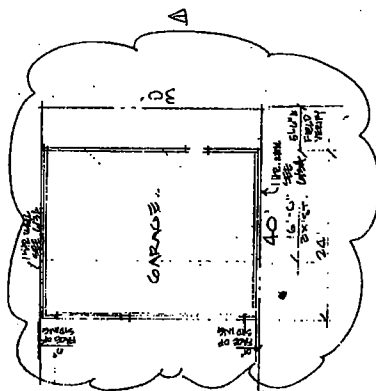
Doc

single story.  
RECYCLING

DRIVEWAY

PACIFIC AVENUE

1975-1976



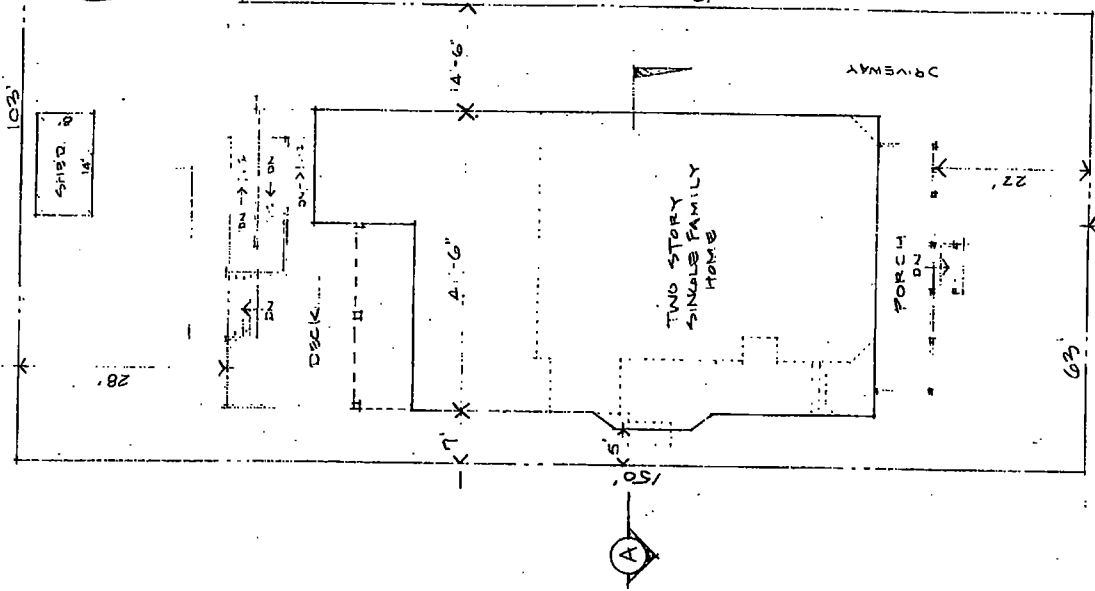
**SITE DATA**  
 ZONE R-4  
 LOT AREA = 10,650 SF

**LOT COVERAGE**

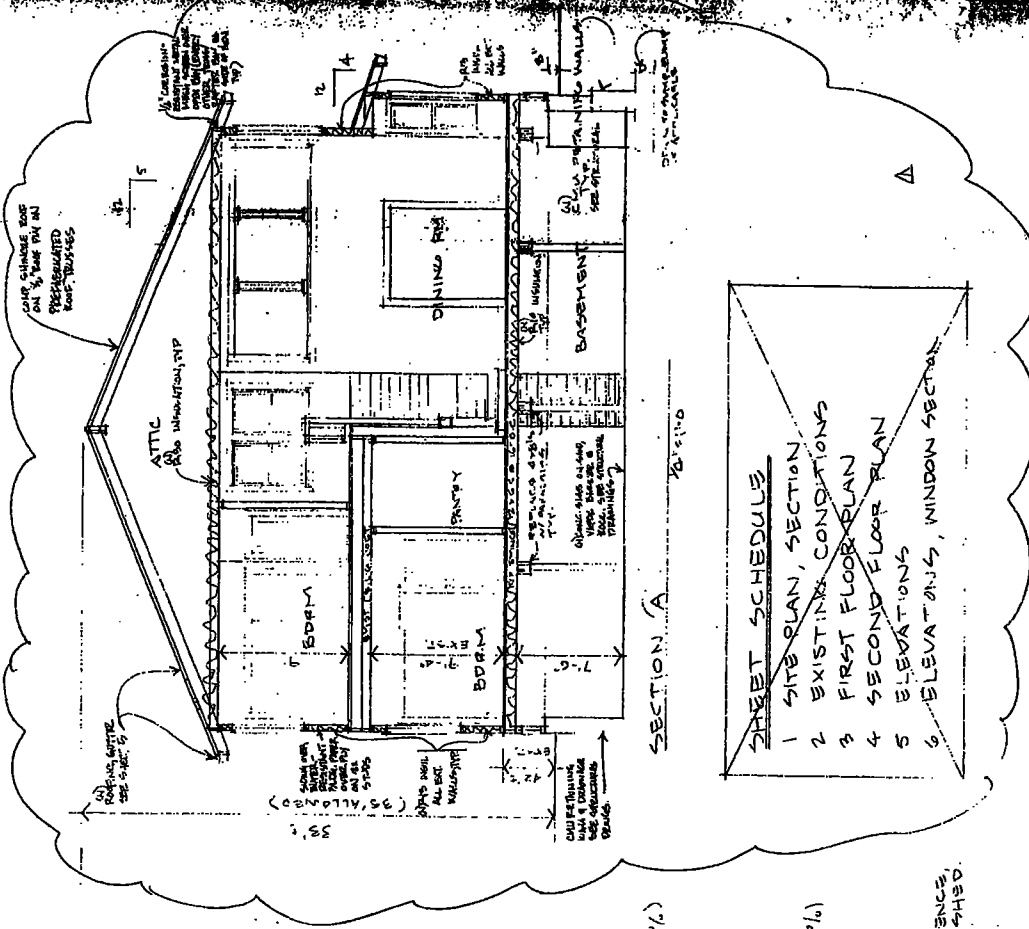
EXISTING		
HOUSE	1835	
GARAGE	495	
SHED	112	
<b>TOTAL</b>	<b>2442 SF (23%)</b>	
PROPOSED		
HOUSE	3447	
GARAGE	720	
SHED	112	
<b>TOTAL</b>	<b>4279 SF (40%)</b>	

**SITE PLAN KEY**

- PROPOSED MAIN RESIDENCE, DETACHED GARAGE AND SHED
- EXISTING PORTION



PACIFIC AVE  
 SITE PLAN



**SECTION A**

**SHEET SCHEDULE**

- 1 SITE PLAN, SECTION
- 2 EXISTING CONDITIONS
- 3 FIRST FLOOR PLAN
- 4 SECOND FLOOR PLAN
- 5 ELEVATIONS
- 6 ELEVATIONS, WINDOW SECTION

ROXAS RESIDENCE  
 616 PACIFIC AVE.  
 ALAMEDA, CALIF.

MAY 12 2005

DESIGN: PLANNING ASSOCIATES, INC.  
 PERMIT CENTER  
 ALAMEDA, CA 94501

8-23-04 PLAN REVIEW  
 5-17-06

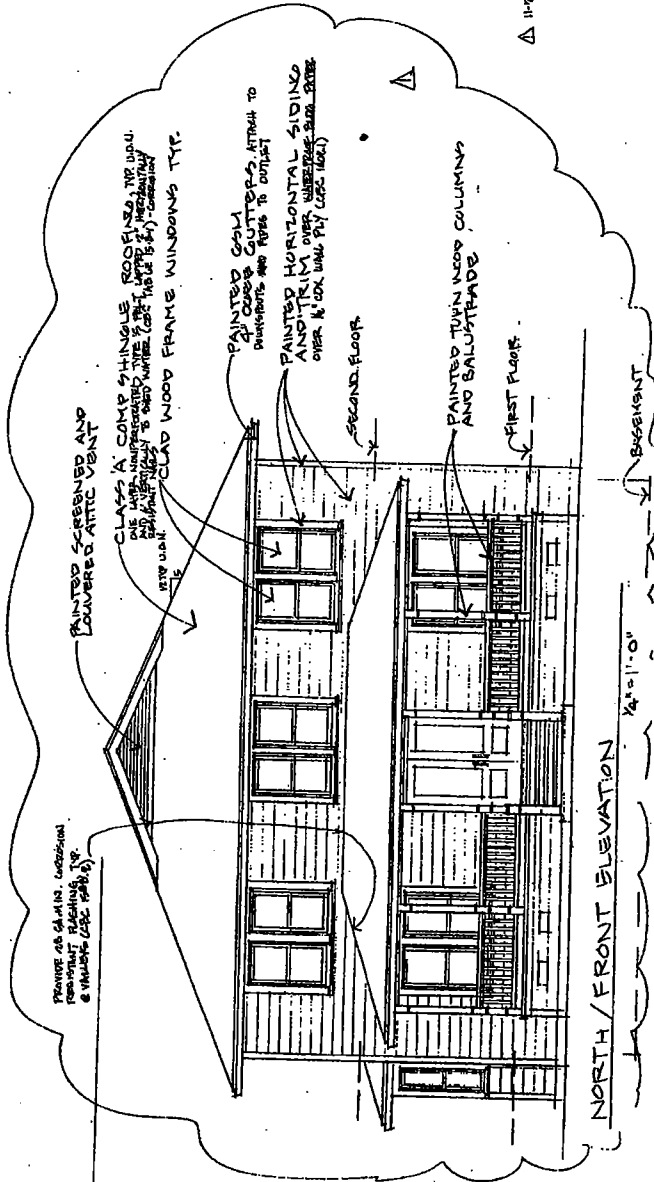
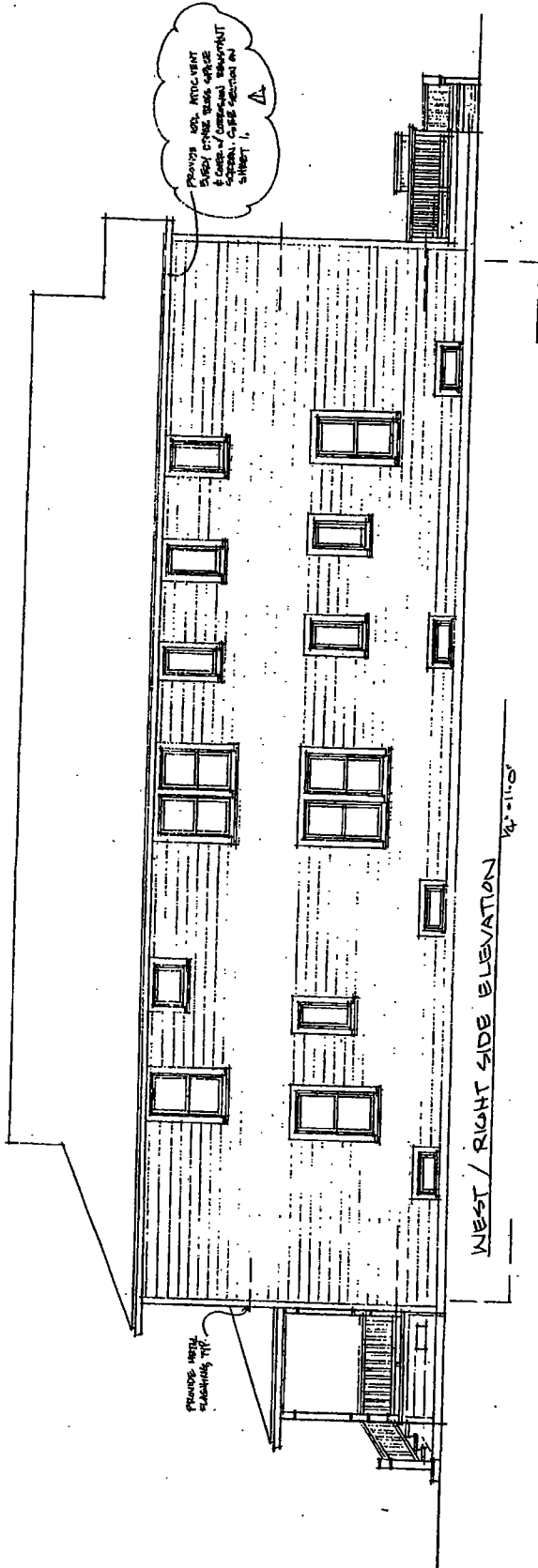


13. PROVIDE AT LEAST ONE RECEIPTABLE LISTEN TO ANOTHER  
CONTRACTOR. CHALKY CONDOMINIUMS LOCALITY WILMINGTON (GIST)
14. PROVIDE CERTAIN TIME TO EXCEED AT LEAST 60% HOME  
FLORIN ON SPENDING MILES & INCREASE AS NECESSARY TO  
FLORIN COST OF CITIES
15. SIZE PLANNING AND RESEARCHING DEVELOPING THE POWER  
AND, PROVIDE OTHER HEAVY AND GIVE EXISTING EXISTING  
VENTS, AND WATER HEATER. PROVIDE AND THROUGHOUT  
EXISTS HAVE BEEN ACTION TO EXISTING AS THROUGHOUT

ENTRIES SUBMITTED  
11-22-04  
5-26-04  
5-17-04

PERM CENTER  
OMEGA 4501





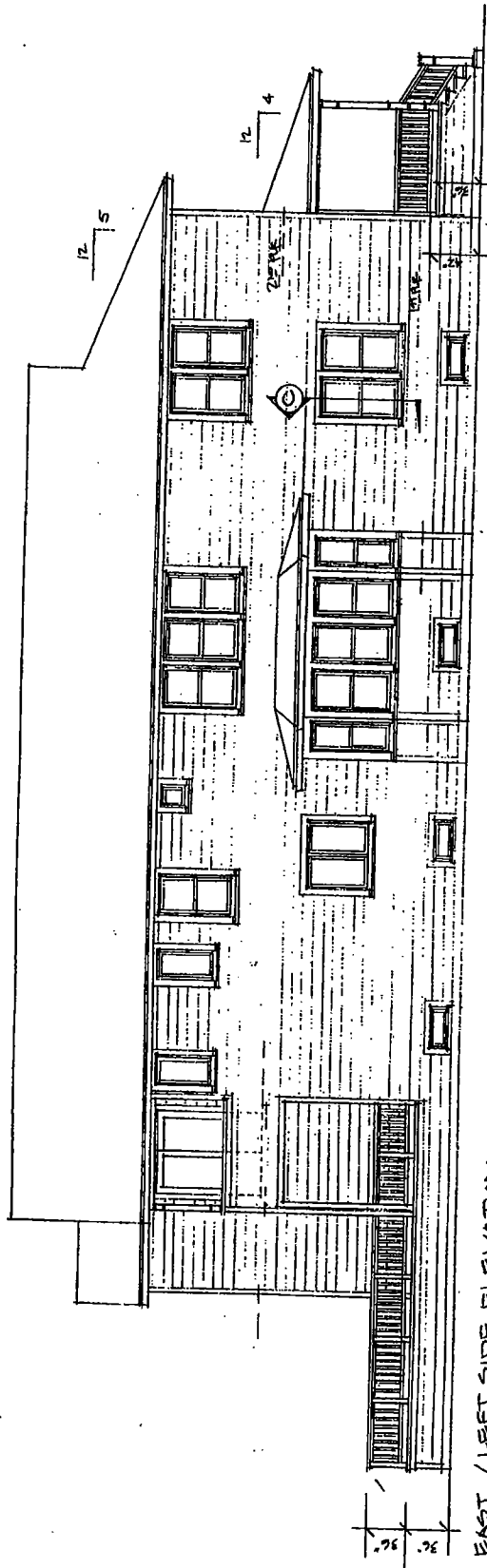
ROXAS, RESIDENCE  
 616 PACIFIC AVE.  
 ALAMEDA, CALIF.

RECEIVED

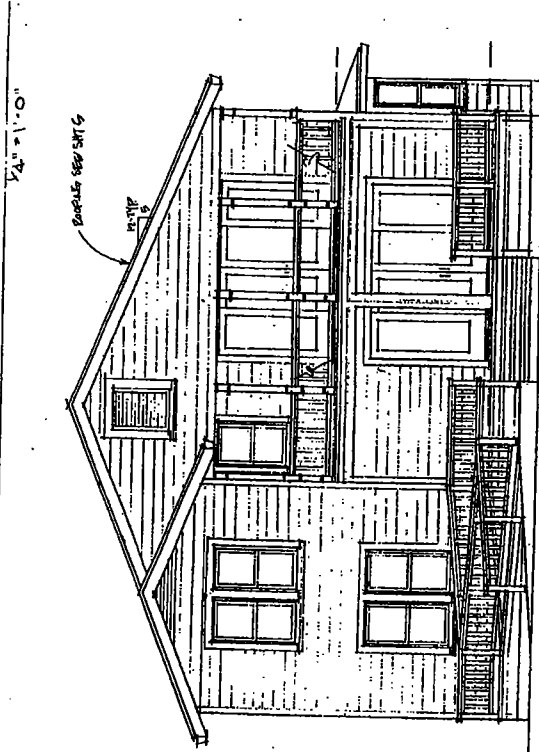
DESIGN PLANNING  
 ASSOCIATES, INC.  
 MAY 12 2005

PERMIT CENTER  
 ALAMEDA, CA 94501

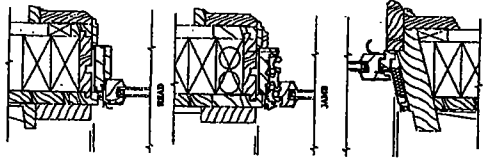
11-25-04 PLAN REVIEW



EAST / LEFT SIDE ELEVATION



SOUTH / REAR ELEVATION



C TYPICAL WINDOW SECTION  
3/4" = 1'-0"

ROXAS RESIDENTS  
616 PACIFIC AVE.  
ALAMBUCA, CALIF.

RECEIVED

MAY 12 2005

DESIGN PLANNING  
ASSOCIATES, INC. PERMIT CENTER  
11-23-04  
S-17-04

11-23-04  
S-17-04



## City of Alameda • California

May 5, 2005

Erwin Roxas  
1091 Melrose Avenue  
Alameda, Ca 94502

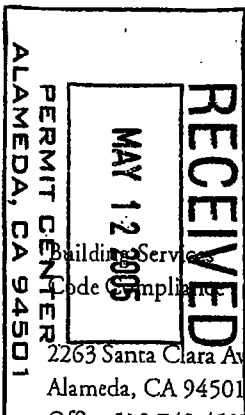
### **RE: NOTICE OF MUNICIPAL CODE VIOLATION AT 616 PACIFIC AVENUE**

Dear Mr. Roxas:

On May 2, 2005, based on a complaint, City of Alameda Code Enforcement staff conducted an exterior inspection of your property located at 616 Pacific Avenue. On this inspection staff observed that the entire building had been demolished. Although a permit history revealed several permits for work on this property, none of them included the complete demolition of the property. Your building is included in the City of Alameda Historic Building Study List and is considered a historical resource. A Stop Work notice was posted for exceeding the scope of the existing permits and demolition of a historical resource.

On May 3, 2005 you met with City staff to discuss the illegal demolition of the historical property you own at 616 Pacific Avenue. As staff explained to you during this meeting, the demolition of this building is a violation of The City of Alamedas Historical Preservation Ordinance 13-21 b. Copies of this ordinance were given to you at this meeting.

**The City of Alameda hereby demands that you immediately cease all construction at your property located at 616 Pacific Avenue, as stated in the Stop Work Notice issued on May 2, 2005. Additionally, pursuant to Alameda Historical Preservation ordinance 13-21 (b) a five (5) year stay in the issuance of any building or construction related permits would be implemented. The effective date of this stay will begin May 2, 2005 and expire May 2, 2010. Additionally, you must submit a landscape or site maintenance plan to be approved by the Planning & Building director within Sixty -(60) days from the date of this notice.**



Office 510.748.4537 • Fax 510.748.4548 • TDD 510.522.7538. 1

Printed on Recycled Paper

Attachment #3

If you disagree with this decision you may appeal it to the Planning Board. To appeal a decision to the Planning Board, the appellant must pay the required fees, including a deposit for time and materials and submit the appropriate form and 15-copies of any supporting plans and/or exhibits. These fees and materials must be submitted to the Planning and Building Department, Room 190, 2263 Santa Clara Avenue, Alameda, within 10 calendar days which would be no later than Monday, May 16, 2005, before 5:00 PM.

Please do not hesitate to contact me if you have any questions regarding this notice. I am available Monday through Thursday 8:00am to 4:00pm

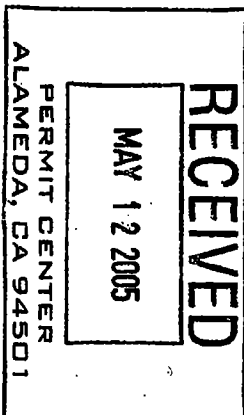
Your anticipated cooperation is appreciated,

Sincerely,



Tim Higaes  
Code Enforcement Officer

cc: Greg McFann – Building Official  
Jerry Cormack – Interim Planning Director  
Julie Harryman – Deputy City Attorney  
George Carder – Supervising Building Inspector  
Alan Tai – Planner III



PETITION FOR APPEAL

TO: CITY OF ALAMEDA  
City Hall  
2263 Santa Clara Avenue  
Alameda CA 94501

Planning Board  
(Planning Board or City Council)

This petition is hereby filed as an appeal of the decision of the  
Code Enforcement Officer, Tim Higaes  
(Planning Director/Zoning Administrator/Planning Board/Historical  
Advisory Board)

which stopped work purportedly pursuant to Preservation Ordinance 13-21(b) for  
(Denied/Granted/Established Conditions)

renovations/improvements at 616 Pacific Avenue for a  
(Application Number) (Street Address)

Design Review Use Permit Variance  
Subdivision Map Rezoning Planned  
Development  
Planned Development/Amendment X Other Construction  
(Specify)

on 5/2/05  
(Specify Date)

The basis of the appeal is: See Attached

(If more space is needed, continue on the reverse side or attach  
additional sheets.)

Erwin Roxas  
(Name)

1091 Melrose Avenue  
(Address)

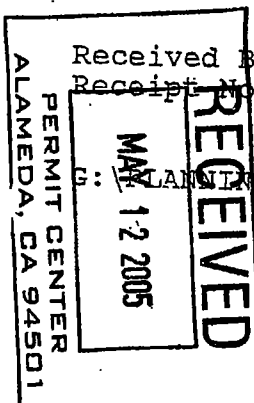
Alameda, Calif.  
(City/State)

(Telephone - Work)  
(510) 551-6659

(Telephone - Home)

\*\*\*\*\*  
(For Office Use Only)

Date Received Stamp



G:\PLANNING\FORMS\APPEAL01.WPD

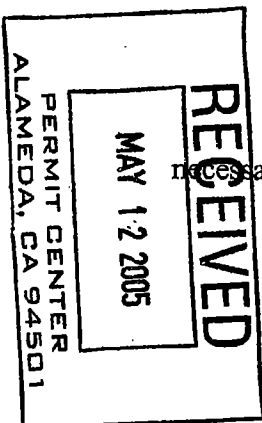
## SCOPE OF PROJECT

The purpose of this project is to renovate and improve my parents' home to make it safer and more handicapped accessible for them and to enlarge the house so that family members can stay and take care of my parents. My mother is very ill. She suffers from Alzheimer's and has a severe case of arthritis which made it impossible for her to get around the house without a wheelchair. Due to her medical condition, she is currently on Sutter VNA and Hospice care. My father also suffers from a severe illness. He has cancer and liver problems. The original structure of the house made it difficult to maneuver in the house with my mother's wheelchair and my father's walker. The need to improve the house was emphasized when social worker Erin Louer with Sutter BNA Hospice determined the house to be an unsafe environment for my parents, was run down, fire hazard, and the structure of the house was wheelchair inaccessible.

The house, pursuant to approved plans, will change from three bedrooms, one bath, one story to six bedroom two story house. This will allow family to live in the house and take care of my parents, rather than putting them in a nursing facility.

This project is to renovate the home to accommodate my parents' physical needs which allow them to spend their remaining years in their home with family and not to have them move away to a nursing home.

The project was designed by the appropriate design professionals and obtained all necessary permits and approvals.



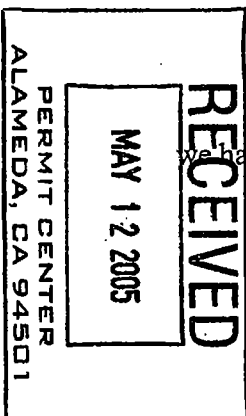
The project includes excavating the basement and improving drainage.

During construction it became apparent that especially at the lower floor there was significant mold and significant wood rot within the floor joists and wall studs. We were concerned that excavating the basement as called for in the approved plans would be dangerous given the extent of the wood rot in the studs and floor joists. We therefore stopped construction and consulted with the Planning & Building Department on March 30, 2005.

We discussed this matter with Mr. Alan Tai, Planner III with the Building Department. We asked Mr. Tai if we could disassemble the floors and walls in order to excavate the basement and then reassemble with the same wood and joists (substituting for any decayed wood) after the basement and foundation were constructed. Mr. Tai advised that that would be acceptable.

We did not demolish the house. In order to preserve the historical value of the house we manually disassembled the floor joists, wall studs and removed the wood rot. We felt there was no safe alternative given the extent of the wood rot. We have set aside all reusable lumber and will be reassembling the house in as true to original construction as possible.

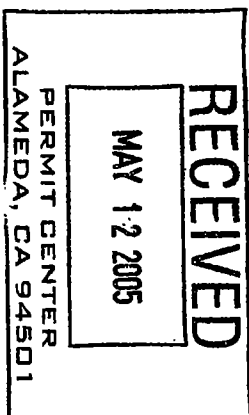
The project was issued a Stop Work Notice on May 2, 2005 on the grounds that we had demolished the house. Again, we did not demolish the house. With what we



thought to be approval of the Building Department we disassembled the house with the full intent of reassembling once the basement and foundation were constructed.

My parents are currently living with my sister during construction. This is not a good situation as my sister's house is also not wheelchair accessible. To stall this project for five years is an extreme hardship to everyone not the least of which is my parents.

698028







**CITY OF ALAMEDA**  
**CENTRAL PERMITS OFFICE, RM 190**  
2263 SANTA CLARA AVENUE  
ALAMEDA, CA 94501  
(510) 747-6800 FAX (510) 747-6804

**Permit to Perform Work**

**Permit Number:**

**CB04-0678**

**Group** Building  
**Type** Combination Building Permit  
**Subtype** Residential  
**Category** Addition

**Permit Address** 616 PACIFIC AVE  
ALAMEDA, CA 94501

**Parcel No.** 074-0430-027-00

**Owner** ROXAS ERWIN  
616 PACIFIC AVE  
ALAMEDA, CA 94501  
510-337-1737

**Applicant** MARTIN MARTINEZ  
163 JUSTIN CIR  
ALAMEDA, CA 94502  
510-551-6659

**Valuation (Contractor)** \$ 200,000.00

Fee Items	# of Each	Amount
10-Building Permit Fee (1)	1	\$1,663.50
20-Electrical Permit Fee - 20 Percent of Bldg. Permit Fee (1)	1	\$332.70
30-Mechanical Permit Fee - 15 Percent of Bldg. Permit Fee (1)	1	\$249.53
30-Plumbing Permit Fee - 20 Percent of Bldg. Permit Fee (1) OR	1	\$332.70
50-Bldg. Svcs. Plan Check Fee (1)	1	\$1,663.50
250-FY01-Filing Fee (per activity)	4	\$156.00
620-Records Management Fee	126	\$428.40
740-Design Review - Planning - Bldg. Inspection Fee (hr)	1.41	\$94.47
782-Engineering Plan Check Fee (free form)	176	\$176.00
920-School Fee - Residential (sq.ft.)	1532	\$6,419.08
950-SMIP - Residential (1)	1	\$20.00
960-Reconnect/Temporary Fee (free form)	250	\$250.00
965-Community Planning Fee (Enter 1)	1	\$600.00
1100-Police and Fire Fees	1532	\$237.46
1110-Improvement Tax (1)	1	\$2,000.00
Permit Tracking Fee	1	\$219.90
<b>Total</b>		<b>\$14,843.24</b>

**LICENSED CONTRACTORS DECLARATION**

I hereby affirm under penalty of perjury that I am licensed under the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professional Code and my license is in full force and effect.

**WORKERS COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for workers compensation as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. OR

I have and will maintain workers compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers compensation insurance carrier and policy number are:

I certify that the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with these provisions or this permit shall be deemed revoked.

**WARNING: FAILURE TO SECURE WORKERS COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AND EMPLOYER TO CRIMINAL PENALTIES AND CIVIL CRIMES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000) IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3700 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

**OWNER-BUILDER DECLARATION**

I hereby affirm under penalty of perjury that I am exempt from the Business and Professions Code, Chapter 9, Divisions 3, for the following reasons:

I, as owner of the property, or my employees with wages as their sole

compensation, will do the work, and the structure is not intended or offered for sale.

I, as owner of the property, am exclusively contracting with licensed contractors to conduct the project.

I certify that I have read this application and state that the information given is true and correct. I agree to comply to all city ordinances and State laws relating to the building construction and hereby authorize representatives of this city to enter upon the aforementioned property for inspection purposes at any time and I make this statement under penalty of law.

This permit will expire if work is not started in 180 days, or if no inspection is scheduled for more than 180 days. This is a building permit when property filled out, signed and validated, and is not transferable.

I will not conceal or cover any construction until the work is inspected and the inspection is recorded on the back of the job copy. All inspection requests required are 24 hours in advance of the inspection.

**HAZARDOUS MATERIALS**

Government Code, Section 65850.2 requires that a person making application for a non-residential building permit declare if any hazardous material will be used or stored at the address contained within the application. Therefore, as the applicant, I hereby declare that materials considered as hazardous by the State of California, Will, Will Not be used and/or stored at this location. Not Applicable.

I hereby agree to save, indemnify and hold harmless the City of Gonzales and its officers, employees and agents all liability, judgments, costs, and expenses which may in any way accrue against the City of Gonzales consequence of the granting of this permit, and will in all things strictly comply with the conditions of this permit.

I understand that the issuance of a permit based on plans, specifications and other data does not give authority to violate or conceal the provisions of the state of local laws and does not prevent the City of Gonzales from requiring the correction of errors or from preventing building operations being carried on when in violation of said laws.

**CONSTRUCTION LENDING AGENCY**

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Section 3097, Civ.I.),c

Lenders Name:

Lenders Address:

**Description of Work:**

1532 SF ADDITION TO SFD (225 @ 1ST FLOOR: 2 MASTER SUITES & 1 BEDROOM; 1307 @ 2ND FLOOR: 3 BEDROOMS, STUDY, 2 BATHROOMS); 794 SF ATTACHED DECK @ REAR ; TEMPORY POWER POLE (BLDG/ELEC/PLUM/MECH)

Wes Ogawa Associates  
Structural Engineers  
1504 Franklin St., Ste. 310  
Oakland, Ca. 94612  
(510) 763-0888

6/20/2005

City of Alameda  
Building Services  
2263 Santa Clara Avenue, Room 190  
Alameda, Ca. 94501

Re: Roxas Residence  
616 Pacific Ave.  
Alameda, Ca.

Dear Building Services:

It has come to my attention that the building at 616 Pacific Ave. has been cited with a stop work order due to removal of building walls for the addition. The exterior walls had extensive dry rot and presented a danger to the workers involved in the remodel.

It is my understanding that the developer, Mr. Martinez, obtained approval for the disassembly in a meeting with Mr. Alan Tai of your department. In the meeting they obtained verbal approval; they proceeded to disassemble the walls to avoid further danger from the wood rot condition such as collapse of the walls in construction. There was no other viable alternative.

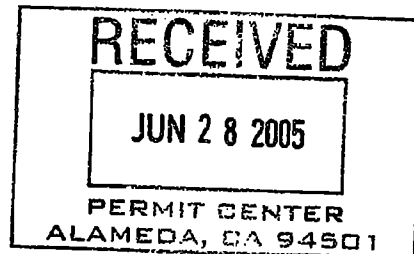
They have kept the lumber from the removed walls on site. However, they cannot re-use some of the material due to the wood rot.

I hope this sheds more information about the process of disassembling of the existing walls.

Sincerely,

*Wesley M. Ogawa*

Wesley M. Ogawa  
Wes Ogawa Associates



May 24, 2005

To the City of Alameda Building Department,

I am providing a response to the "Notice of Public Hearing" notice I recently recently received pertaining to the remodel project at 616 Pacific Avenue.

My name is Paul Rezucha, the homeowner of the property next door, 610 Pacific Avenue. Martin Martinez is the person responsible for the remodel at 616 Pacific Avenue and has been performing the work thus far on the property.

I have known Martin for 5 years now and have seen that he has a great rapport with the building inspectors on his own house remodel and the project next door and always prides himself in doing above and beyond quality work on his projects. If he is not sure about a particular aspect of the plans, he will discuss this with the inspectors to ensure that he does the work correctly. This just saves time and money in the long run. Recently on the 616 Pacific project, there was a problem with the foundation for the garage that the inspector pointed out and Martin promptly made the changes to make it right.

As for the house remodel, Martin made a special trip to the building department to discuss the problem with the 2 required existing walls that needed attention. There were issues of wood rot in many of the studs and floor joists, obviously needing replacement. He was also concerned about safety and wanted to make sure that workers would not be in any danger when digging out the basement. The safest way to do this was to dismantle the stud walls and rebuild them as according to the plans using all original solid studs. After returning from the building department and getting the "go ahead" (apparently the building planner said it was ok to continue as long as the structure was built according to the plans), Martin hired a crew to dismantle the complete wall structure stud by stud and retain all the good wood. This took a substantial amount of labor and probably cost a fair extra amount to complete. All this wood is neatly stacked at the back of the property. No heavy equipment was used anywhere to take down the structure. No bulldozer ever was on the property. Only a Bobcat was used to break up cement pathways and stairs. I was told that someone complained that a bulldozer was on the property demolishing the building. This is NOT true. I was home during the whole dismantling process and it was all done carefully to retain as much of the good lumber as possible.

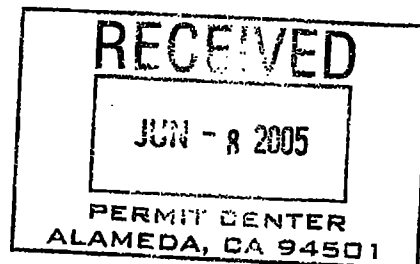
This project has been delayed now for over a month and I certainly hope that the decision to continue the work is made soon. I would not like to have an empty dirt pit as a neighbor for the next 5 years and certainly would not appreciate what this would do to my property value.

In my opinion, Martin has followed the rules and regulations to the tee and if there is anyone at fault, it would be in the response and advise of the building planner. It should have been clearly stated what could, and what could not be done to abide by the regulations of the permit. Martin was looking after the best interests of the workers safety and in building a solid, long lasting house for his in-laws.

If you have any questions, please don't hesitate to contact me.

Sincerely,

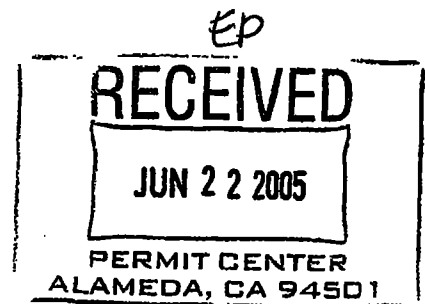
Paul Rezucha  
610 Pacific Avenue  
Alameda, CA 94501  
Tel: (510) 864-7551



620 Pacific Avenue  
Alameda, CA 94501

June 11, 2005

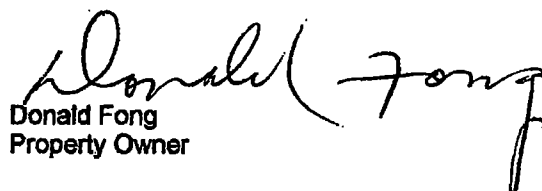
Planning Division, City of Alameda, City Hall  
2263 Santa Clara Avenue, Rm. 190  
Alameda, CA 94501



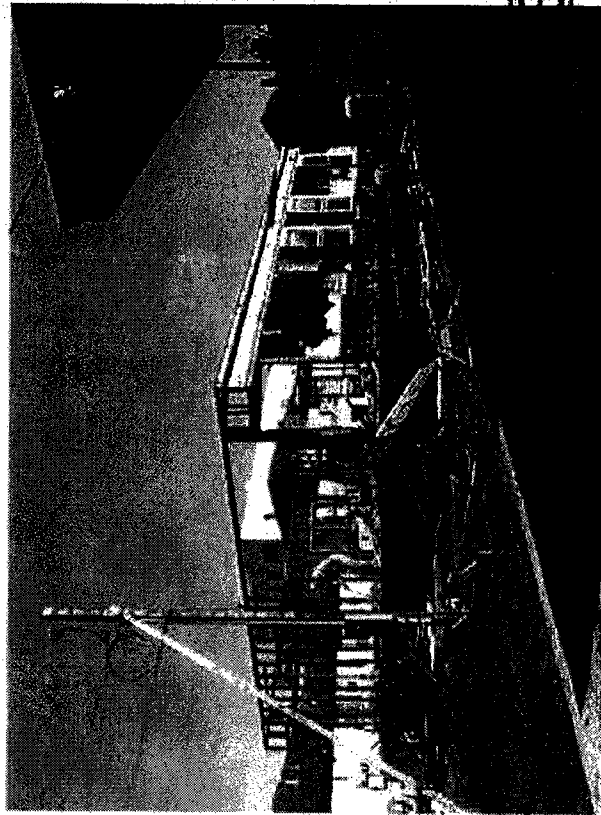
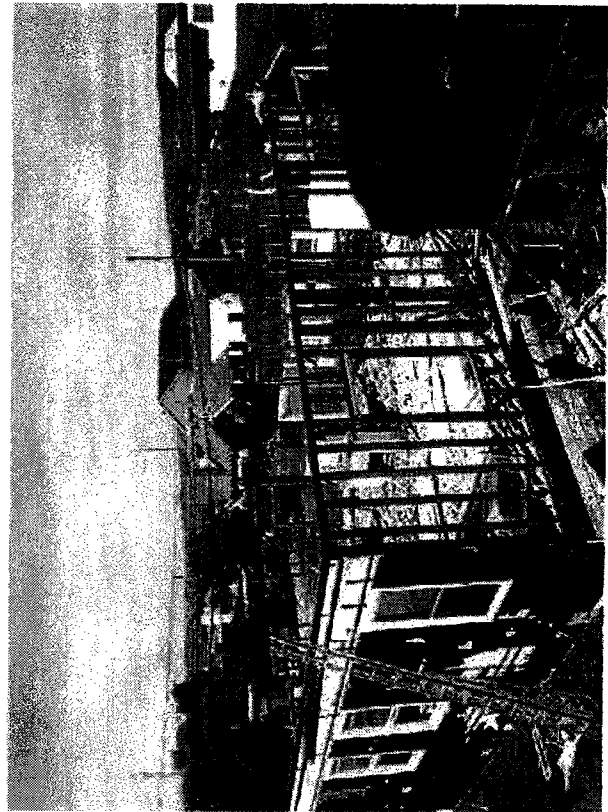
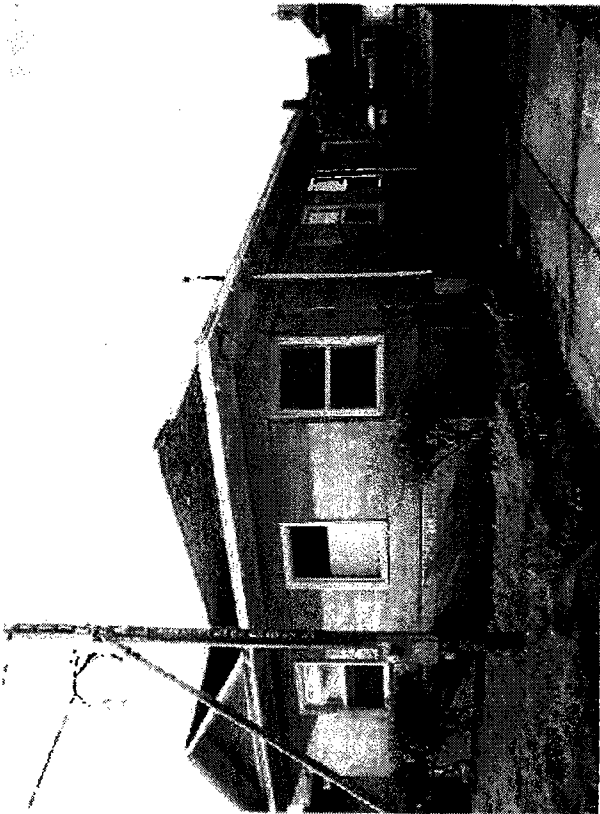
Dear Planning Division,

It has been brought to my attention that the Planning Board of the City of Alameda will be holding a public hearing to consider Major Design Review DR04-0051 - Erwin Roxas - 616 Pacific Avenue. I understand that based on the outcome of the hearing Erwin Roxas may or may not be allowed to build on his property for a period of five years. It concerns me that a lot that once played an active role in the neighborhood's landscape will simply be unproductive for five years. With West Alameda's Webster Street improvements, I trust nearby neighborhoods would embrace the benefit this growth offers. It would be inconsistent to have so much invested in the local businesses and lack of support for the residents that sustain the growth of Alameda from just around the corner. I would like to see Alameda reach its full potential both residentially and commercially. An empty lot would be a symbolic representation to everyone that a lack of continuity exists. I would hope that a mutually beneficial compromise can be made on this matter.

Sincerely,

  
Donald Fong  
Property Owner

Roxas house

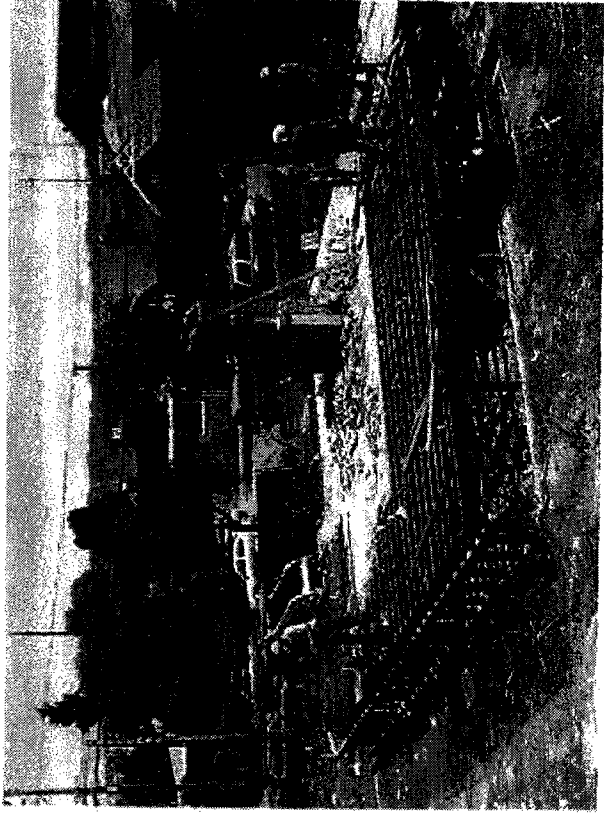
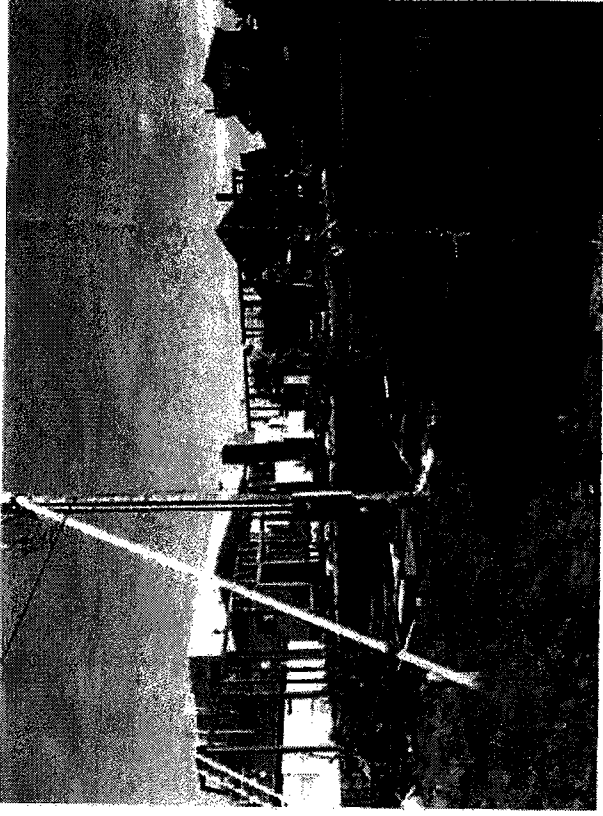
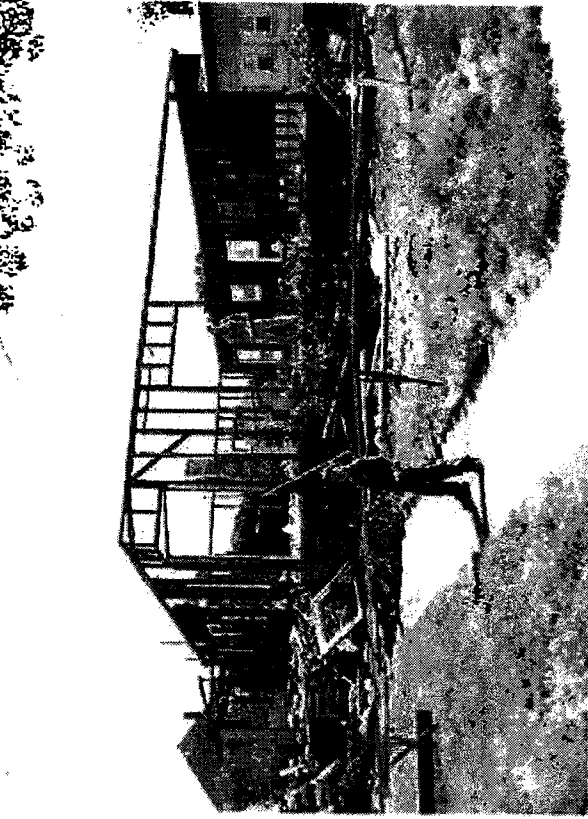


Attachment #8

Roxas house

ED  
MAY 12 2005  
6:02PM  
PERMIT CENTER  
ALBANY, N.Y.

Roxas house



Oxes house



IVED

MAY 12 2005

PERMITS CENTER

**“DRAFT”** Historical Advisory Board Minutes from Regular Meeting of 8-4-05.

**5. Consideration of penalties for unauthorized demolition at 616 Pacific Avenue.**

Emily Pudell briefly reviewed the staff report.. Ms. Pudell stated that an application for Major Design Review was approved in 2004. The description of work that was provided on application stated that the scope of work would affect a significant portion of the existing structure; however, demolition of the structure was not specifically called out in the project description. The applicant felt that he had obtained all necessary permits to “dismantle” the house. Staff feels that there was a miscommunication with the applicant. Although this building was listed on the Historical Building Study List with an (H) designation, which means that it may have Historical importance because of it’s age or location or similarity to other buildings done by important architects or builders, staff was unable to find any historical significance to warrant the inclusion of 616 Pacific Ave. on the list.

Staff has received several letters from the neighbors opposing the five year stay in development. Staff is recommending waiving the five year stay in development with conditions stated in draft Resolution.

Chair Anderson opened the Public Hearing.

Birgitt Evans, Kevin Frederick, Nancy Hird, spoke in opposition of waiving the five year stay in development.

Bill Smith spoke on penalties of unauthorized demolition occurring in the City of Alameda.

Paul Rezucha, spoke in favor of waiving the five year development stay.

There were no more speakers. Chair Anderson opened the floor to Board discussion.

Ms. Pudell informed the Board that staff is currently considering revisions to the Historical Ordinance, most importantly the Interim Review section and penalties section. They intend to bring them to the Historical Advisory Board for public hearing soon.

In response to Chair Anderson’s question regarding the process of modifying a structure on the Historical Building Study List, Ms. Eliason responded that Staff would evaluate the application with the Building Official to determine if it meets the criteria for a Certificate of Approval for demolition. Currently the definition of a demolition is set at 30% of the value. If so, it would need to have HAB approval as well as Design Review.

Board Member Miller confirmed that there is a requirement that the property must be maintained during the five year stay which would be enforced by the Code Compliance division.

Erwin Roxas, owner, informed the Board that during construction they found extensive dry rot damage. He stated that he then came to the Planning and Building Department and asked staff if they could dismantle the house. He feels that was when the miscommunication occurred. He believed he had approval. When they dismantled the house they saved the wood and intended to use the historic wood in the new structure. Mr. Roxas also stated that the house was dismantled for safety reasons.

Ms. Pudell stated that the plans do not identify which studs would be placed at which location. That information would not be required in the Design Review process.

Martin Martinez, applicant, brought the proposed plans do state they were going to sister the existing wood with new 2 x 4 studs.

Chair Anderson called a brief recess for the Board to look at the plans.

The meeting was called back to order at 10:00 pm.

M/S (Lynch, Miller) to extend the meeting until 10:30 pm. 3-0-1.

Chair Anderson confirmed that the plans do say the old wood would be used in the new construction.

Chair Anderson feels that the Board should have been notified in the beginning of this process. This is something that the Board seriously needs to look at with staff and reiterate the Boards' purpose. She spoke in favor of the five-year stay, would like the owner to submit a landscaping plan as stated in the notice sent to him from Code Enforcement. Although she concurs with the neighbors regarding the blight of a vacant lot for five years, she does not approve of waiving the five year stay in development.

Board Member Miller stated he has difficulty with the term "dismantled". He stated the demolished house does not resemble the new house at all. He was on the Board when they worked on five year stay, and feels if it is not enforced in this case, then it will send the wrong message to the public. Board Member Lynch concurred with Board Member Miller's statement.

In response to Board Member Lynch's question regarding why the landscaping plan has not been submitted, Ms. Pudell stated that once staff receives direction from this Board, they will know how to proceed.

M/S (Miller, Lynch) to waive the five year stay in development for the unauthorized demolition at 616 Pacific Ave. as stated in the draft Resolution. 0-3-1.

Ayes: 0; Noes: 3; Absent: 1. Application is denied.



CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

GRANTING THE APPEAL AND OVERTURNING THE HISTORICAL ADVISORY BOARD'S DECISION TO UPHOLD THE FIVE-YEAR STAY IN DEVELOPMENT FOR THE PROPERTY LOCATED AT 616 PACIFIC AVENUE.

WHEREAS, on July 12, 2004 Planning and Building Department Staff approved Major Design Review DR04-0051 for additions to the 1<sup>st</sup> story, a new 2<sup>nd</sup> story addition, interior remodel, porch additions, etc. that would add approximately 1,500 square feet to the dwelling located at 616 Pacific Avenue; and

WHEREAS, the Building Official made a determination that the proposed project did not involve demolition because it would not affect more than 30% of the value of the structure; and

WHEREAS, on January 10, 2005 Planning and Building Department Staff issued building permits for the approved modifications, mentioned above; and

WHEREAS, an inquiry was received by the Code Compliance Division on May 3, 2005 regarding the demolition of the main dwelling at 616 Pacific Avenue; and

WHEREAS, on May 5, 2005, a Stop Work Order and notice of a five year stay in development was placed on the subject property, pursuant to the Alameda Municipal Code (AMC) §13-21b.; and

WHEREAS, a letter was submitted on June 28, 2005 from a structural engineer indicating that the main building had extensive dry rot damage; and

WHEREAS, letters of support have been received from neighboring property owners stating that they encourage the redevelopment of the property, as originally proposed; and

WHEREAS, if the site remained vacant on a street that is otherwise substantially developed, the property would have a negative impact on the adjacent properties and the surrounding neighborhood; and

WHEREAS, Staff presented research and information regarding the dwelling's deteriorating condition and lack of historic significance at a public hearing of the Historical Advisory Board (HAB) on August 4, 2005; and

WHEREAS, the HAB made a determination that the property should be subject to the five year stay in the issuance of building and construction related permits; and

WHEREAS, there are extenuating circumstances with regard to this property that make imposition of the five year no-build order inappropriate; and

NOW, THEREFORE BE IT RESOLVED that the City Council finds that the project is Categorically Exempt under California Environmental Quality Act Guidelines, Section 15321 – Enforcement Actions by Regulatory Agencies;

NOW, THEREFORE BE IT RESOLVED that the City Council supports the appeal and overturns the Historical Advisory Board's determination that the property at 616 Pacific Avenue shall be subject to the five year stay in the issuance of any building permit or construction-related permit. The dwelling, approved by Major Design Review #DR04-0051, should be constructed, subject to the following conditions:

1. APPROVED PLANS. The construction of the single-family dwelling shall be completed in substantial compliance with the plans dated May 24, 2004, prepared by Design Planning Associates, Inc., marked as "Exhibit A", on file in the City of Alameda Planning and Building Department.
2. CONDITIONS OF APPROVAL: DR04-0051. The construction of the single-family dwelling shall comply with all conditions of approval identified in the Notice of Preliminary Major Design Review Approval, dated July 12, 2004.

HOLD HARMLESS. The City of Alameda requires as a condition of this approval that the applicant, or its successors in interest, defend, indemnify, and hold harmless the City of Alameda or its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, and employees to attack, set aside, void, or annul, an approval of the City concerning the subject property. The City of Alameda shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding, or the City fails to cooperate in the defense, the applicant shall not hereafter be responsible to defend, indemnify, or hold harmless the City.

NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision plus extensions authorized by California Code of Civil Procedure Section 1094.6.

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

# MEMORANDUM

Date: August 31, 2005

To: Mayor Beverly Johnson  
and Members of City Council

From: Carol A. Korade  
City Attorney

Re: Resolution Empowering City Attorney To Employ Special Legal Counsel;  
City Council Policy Regarding Hiring Procedures for Special Legal Counsel

## BACKGROUND AND DISCUSSION

On July 19, 2005, the City Attorney provided a proposal for new procedures, at City Council's request which would provide: 1) greater Council oversight for expenditures on outside counsel fees, 2) a competitive process for the hiring of outside counsel, and 3) monthly financial reports on the status of expenditures on outside counsel fees. The City Council directed that the new procedures be brought back to Council in the form of a Resolution for action at the next available Council meeting.

A form of Resolution was submitted for Council review at its August 2, 2005 regular meeting. At the August 2, 2005 City Council meeting, Council requested changes to the form of the Resolution for consistency with the Charter limitations set forth in Section 8-5 of the City Charter. Additionally, it was suggested that the procedures for hiring of outside counsel be considered as a separate Council policy. Copies of both a form of Resolution and a separate City Council policy regarding hiring procedures (including reporting requirements) are attached to this staff report.

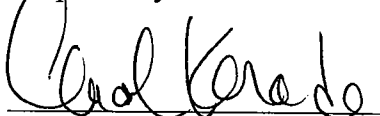
## BUDGET CONSIDERATION/FISCAL IMPACT

The outside counsel budget was previously appropriated by the Council on June 6, 2005.

## RECOMMENDATION

It is recommended that the City Council adopt the Resolution Empowering the City Attorney to Employ Special Legal Counsel, and the separate City Council policy regarding procedures for hiring special legal counsel.

Respectfully submitted:



Carol A. Korade  
City Attorney

Attachment

**Re: Resolution 5-E  
9-6-05**

## CITY COUNCIL POLICY REGARDING PROCEDURES FOR HIRING OF SPECIAL LEGAL COUNSEL

- City Attorney is authorized by Council to spend up to \$35,000 per matter from appropriated budget without prior Council approval
- City-initiated litigation requires prior City Council authorization
- For matters estimated to cost less than \$35,000, City Attorney hires outside co-counsel from legal panel selected through RFQ process
- City Attorney meets with Council in closed session at the earliest possible time and provides an analysis of the litigation, including litigation costs, as a confidential document if any of the following apply:
  - Estimated to exceed \$35,000 in defense costs
  - Involving policy questions
  - Having significant ramifications for the City
  - If requested by City Council

### Limitations on Settlement Authority

- City Attorney's settlement authority is limited to \$15,000 for all matters; settlement proposals exceeding \$15,000 must be approved by City Council

### Reporting Requirements

- The City Attorney keeps the Council apprised of the status of the litigation through periodic confidential reports
- Monthly financial reports provided to City Council on costs of outside counsel on litigation and transactional matters
- City Attorney provides confidential bi-annual litigation status reports to Council in January and July, with updated budget and analysis
  - Litigation status reports identify outside co-counsel for each case
  - Litigation status reports summarize the proceedings for each City initiated and defense case, including all "closed" cases for the current fiscal year and the preceding five (5) fiscal years
  - Litigation status reports include more detailed, separate confidential analysis provided for each litigation matter as attachments to the litigation status report

- Litigation status report includes costs of litigation and any settlements/payments made by the City
- City Attorney meets periodically in closed session with Council to discuss any pending litigation matter

#### Limitations on Hiring of Outside Counsel

- City Attorney will limit his/her hiring of outside counsel legal services from one of the following legal panels, which shall have been selected by City Attorney using a competitive (RFQ) process:
  - 1) Bond Counsel
  - 2) Litigation Defense (Tort, Public Safety, Construction Contract, Federal, etc.)
  - 3) Real Property/Condemnation/Unlawful Detainer
  - 4) Miscellaneous Specialty (such as Tax, Labor, Federal/BRAC, Environmental/CEQA/land use, Airport)
- All new contracts for the outside counsel legal panel will be subject to the \$35,000 spending limitation, without express authority to exceed the budget; City Attorney may not exceed this limitation on budgeted appropriations without seeking Council authorization in open session

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_\_

EMPOWERING CITY ATTORNEY  
TO EMPLOY SPECIAL LEGAL COUNSEL

WHEREAS, the City Attorney is the legal advisor to the City Council pursuant to the City Charter; and

WHEREAS, Charter Section 8-5 provides that the City Council may empower the City Attorney, upon request, to employ special legal counsel; and

WHEREAS, at regular City Council meetings during June and July 2005, the City Council reviewed its past procedures regarding any specific Council action to empower the City Attorney to employ special legal counsel for both consistency with Charter requirements and for consistency of procedures with other legislation bodies within the City for which the City Attorney acts as General Counsel and determined a need to memorialize a consistent empowerment procedure; and

WHEREAS, this Resolution provides the parameters for City Council empowerment of the City Attorney to employ special legal counsel pursuant to Charter Section 8-5.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ALAMEDA THAT:

1. The Council of the City of Alameda hereby empowers the City Attorney to employ special legal counsel, pursuant to Charter Section 8-5 unless any of the following occur:

- a) Estimated legal fees to exceed \$35,000, or
- b) Litigation involves policy questions, or
- c) Litigation has significant ramifications for the City, or
- d) If requested by the Council, or
- e) Litigation is to be initiated by the City.

If any of the above criteria is present, the City Attorney must seek City Council empowerment to employ special legal counsel as soon as practical. In the interim, outside counsel retention is limited to the amount necessary to provide preliminary analysis and assistance.

2. City Attorney's settlement authority is limited to \$15,000 for all matters; settlement proposals exceeding \$15,000 must be approved by City Council.

3. The City Attorney is to comply with City Council Policy Regarding Procedures for Hiring of Special Legal Counsel.

\* \* \* \* \*

Approved as to Form  
CITY ATTORNEY

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the day of \_\_\_\_\_, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of the said City this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Lara Weisiger, City Clerk  
City of Alameda



**CURRENT APPLICATIONS  
CIVIL SERVICE BOARD  
ONE (1) VACANCY**

Lydia L. Chan

Karen Green

Linda M. McHugh

Michael E. Soderberg

CURRENT APPLICATIONS  
ECONOMIC DEVELOPMENT COMMISSION  
**ONE VACANCY**  
COMMUNITY-AT-LARGE SEAT

Robert A. Bonta

R. Annette Brisco

Michael R. Fassler

Claire Fitzgerald

Jay L. Ingram

Janet W. Iverson

Carrolyn M. Kubota

Lenard L. Lee

Diane C. Lichtenstein

James A. Price

Stephanie L. Prothero

Valerie Ruma

William C. Russell

Jay J. Seaton

Brad C. Shook

Jay G. Townley

Morris H. Trevithick

Randy K. Watkins

CURRENT APPLICATIONS  
HISTORICAL ADVISORY BOARD  
**ONE (1) VACANCY**  
LANDSCAPE ARCHITECT/ARCHITECT/DESIGN BUILD SEAT

Hanson D. Hom

Janet W. Iverson

Greg J. Klein

**CURRENT APPLICATIONS**  
**HOUSING AND BUILDING CODE HEARING AND APPEALS BOARD**  
**ONE (1) VACANCY**

Jacob M. Chapman

James A. Price

David A. Solis

CURRENT APPLICATIONS  
PUBLIC ART COMMISSION  
**TWO (2) VACANCIES**  
TWO INCUMBENTS ELIGIBLE FOR REAPPOINTMENT

Monetha G. Hatcher

Karen Lee, Incumbent

Dian McPherson

K.C. Rosenberg, Incumbent

CURRENT APPLICATIONS  
RECREATION AND PARKS COMMISSION  
**TWO (2) VACANCIES**

Kathryn F. Boyle

Michael Cosentino

John F. Curliano

James R. Currier

Lauren R. Eisele

Linda Gilchrist

Harry L. Hartman

Lee A. Kaplan

Geoffrey M. Lee

Jessica Lindsey

Tim Marr

Scott A. McKay

Lissa V. Merit

Jessica S. Niland

Terri Bertero Ogden

Donald E. Oransky

Cookie Robles-Wong

Rueben Tilos

Gail A. Wetzork